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CAREER & TECHNOLOGY STUDIES

You and the Law 1
LGS 1010



**Distance
Learning**

Alberta
EDUCATION



Welcome!

Welcome to LGS 1010.

We hope you'll enjoy your study of
You and the Law I.

CTS strands were designed to stand alone or be integrated with other strands for a customized course of studies to meet student needs. Through each strand, CTS basic competencies (knowledge, skills, and attitudes) will be identified as follows:

Careers



Careers: identify appropriate career linkages within the strand being studied

Safety: assess potential risks, and follow personal and environmental safety procedures

Safety



Communication



Communication: effectively present concise written, visual, and oral communications

Task Management: demonstrate an ability to locate and use resources and to use time effectively

Task Management



Ethics



Ethics: make judgements about whether behaviour is right or wrong on personal, community, and global levels

Teamwork: work towards goals co-operatively, collaboratively, or independently, and acknowledge the opinions of others

Teamwork



Innovation



Innovation: recognize opportunities/problems and identify and suggest new ideas

Technology: effectively use technology when required

Technology



These basic competencies build daily living skills useful in a broad range of future endeavours and careers.

The eight icons that appear here indicate to students and facilitators that a basic competency has been identified in the activity offered to the students. Not all of the icons appear in each module.

Resources

Other than this Student Module Booklet and the accompanying Assignment Booklet, the only resource you'll require to complete LGS 1010 is a notebook or binder along with a writing implement. Some optional videotapes are, however, recommended; so you may wish to have access to a VCR. The optional videotapes are

- from the ACCESS series *You and the Law*
 - *Contract and Consumer Law* (Section 1: Enrichment)
 - *Landlord and Tenant Law* (Section 2: Enrichment)
 - *Marriage and Common Law* (Section 3: Enrichment)
 - *Divorce* (Section 5: Enrichment)
 - *Wills* (Section 6: Enrichment)
- from the TVONTARIO series *Business Concepts—Contract Law*, available from ACCESS (Section 1: Enrichment)
 - *Contracts: What Are They?*
 - *Contracts: Basic Agreement*
 - *Contracts: Legal Capacity*
 - *Contracts: Genuine Consent*
 - *Contracts: Legality*
- from the TVONTARIO series *A Question of Justice*
 - *Family After Family* (Section 5: Enrichment)

The module also offers some suggestions for optional Internet investigations, so if you have access to a computer linked to the Internet, so much the better.

Note that you may be asked as part of this module to do outside research and to contact people in your community who are involved in law-related businesses or professions.

Visual Cues

In addition to the Career and Technology Studies basic competencies icons described earlier, you may find visual cues throughout the Student Module Booklet to assist you in your studies. Read the following explanations to discover what each icon prompts you to do.



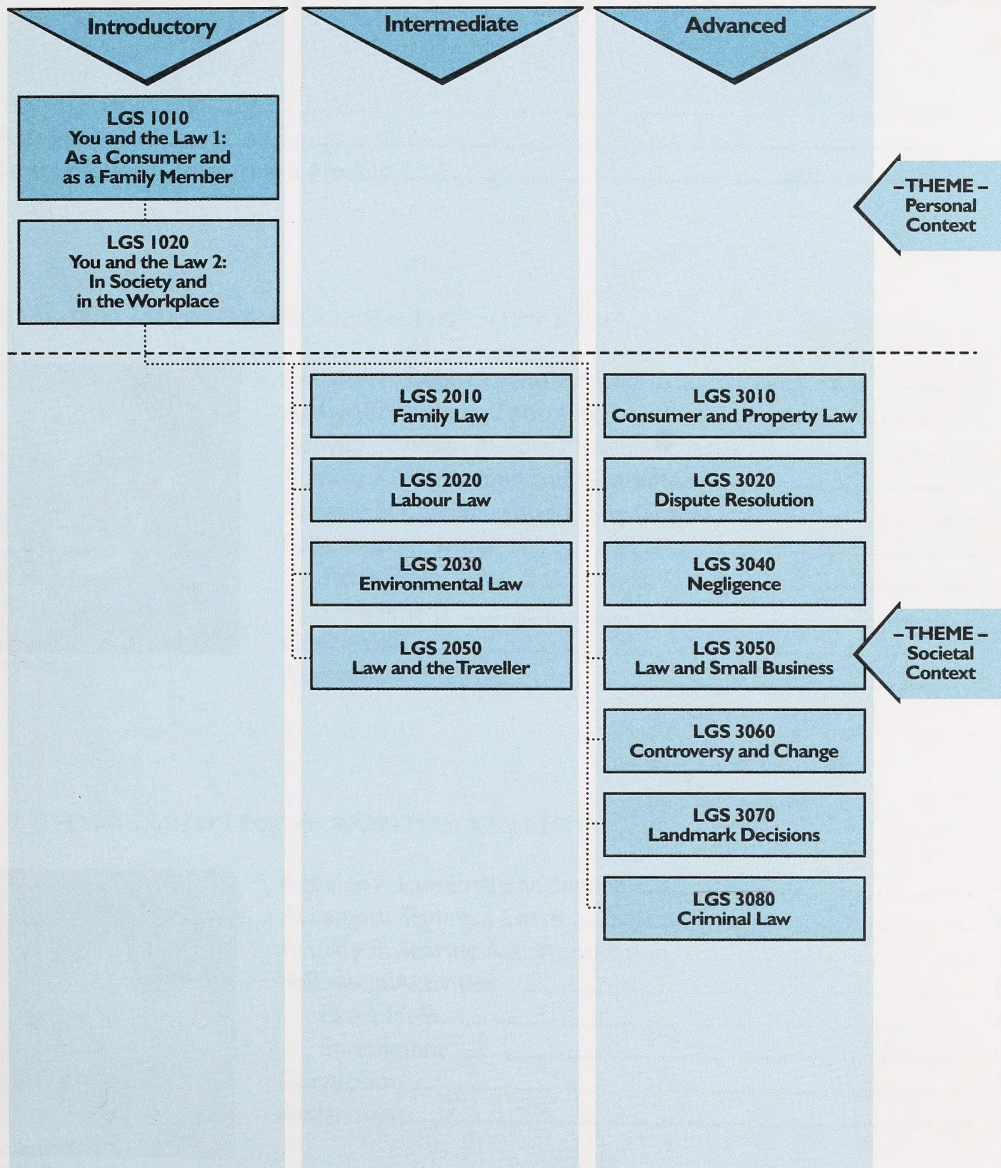
View a videocassette.



Access the Internet if you have that capability.

Legal Studies

O · V · E · R · V · I · E · W



..... Recommended sequence

Some of these modules may not yet be in a distance learning format.





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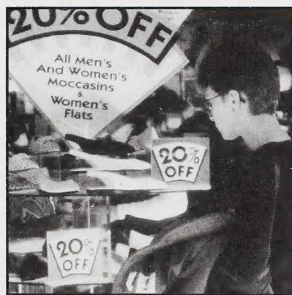


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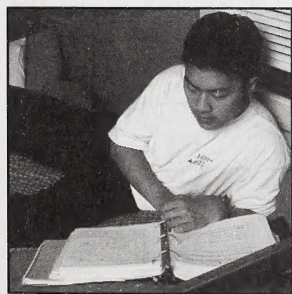


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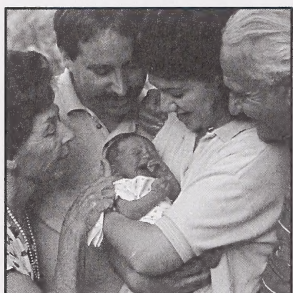
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<https://archive.org/details/youlaw1asconsume00albe>

You and the Law 1



O • V • E • R • V • I • E • W

JASON and Michelle are a young couple who've recently finished high school. They're thinking about getting married and renting an apartment. Here's part of a conversation they have one day:

Jason: You know, I'm starting to think that living on our own's going to be tough.

Michelle: What do you mean?

Jason: I don't know. I guess I'm finding all these classified ads for apartments and these flyers advertising furniture sales a bit overwhelming. I've never done this stuff before.

Michelle: Well, remember, we have rights when buying and renting. We'll just have to make sure we get good warranties and that our landlord treats us fairly. It'll work out.

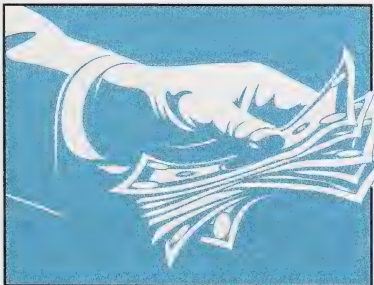
Jason: Maybe. Y'know, I'm also a bit worried about getting married. Can we afford it? Are we ready for it? Maybe we should just live together for a while.

Michelle: You know our parents would be really upset. Besides, we decided it was time for some commitment. Remember?

Can you identify with any of Jason and Michelle's concerns? Do you sometimes wonder about what you'll face when you graduate? Are you ever overwhelmed with what lies ahead when it comes to deciding on living arrangements, establishing long-term relationships, making major purchases, and planning for the future?

In this module, you'll be introduced to federal and provincial legislation that protects you as a consumer. You'll also explore legal issues related to living with a partner, a family, and children. Finally, the module will look at the legal procedures involved in preparing your will and estate.

When you're finished the module, you should be well on your way to coping with the legal issues you'll face when the time comes to strike out on your own.



You and the Law 1

Section 1: Buying Goods and Services

Section 2: Renting Accommodation

Section 3: Living with a Partner

Section 4: Living with the Family

Section 5: Leaving a Partner

Section 6: Preparing Your Will

Assessment

The document you are presently reading is called a Student Module Booklet. It will show you, step by step, what to do and how to do it.

This module, You and the Law 1, is worth one credit. The module is comprised of six sections. Within each section, your work is grouped into activities. Within the activities, there are readings, explanations, and questions for you to work through. You will correct these activities yourself using the Appendix at the end of this module. These suggested answers will provide you with immediate feedback on your progress.

A portion of your grade in this module will be based on the assignments that you complete for assessment. There is one assignment after each section. The mark distribution is as follows:

Section 1 Assignment	18 marks
Section 2 Assignment	17 marks
Section 3 Assignment	16 marks
Section 4 Assignment	15 marks
Section 5 Assignment	20 marks
Section 6 Assignment	<u>14 marks</u>

TOTAL 100 marks

The CTS modules are competency based, which means that you must successfully complete each section to receive credit for the module.

In addition, you might also be required to complete a final test. The weighting for this final test will be determined by your teacher.

Strategies for Completing a Module

Organize your materials and work area before you begin: Student Module Booklet, textbook, notebook, pens, pencils, and so on. Make sure you have a quiet area in which to work, away from distractions.

Because response lines are not provided in the Student Module Booklet, you'll need a notebook or lined paper to respond to questions and complete charts. It's important to keep your lined paper handy as you work through the material and to keep your responses together in a notebook or binder for review purposes later.

To achieve success in this module, be sure to read all of the instructions carefully and work slowly and systematically through the material. Remember, it's the work you do in this Student Module Booklet that will prepare you for your assignments. Try to set realistic goals for yourself each day; and when you've set them, stick to them. Do your assignments regularly, and don't forget to review your work before handing it in. Careful work habits will greatly increase your chances for success in Legal Studies.

Good luck!



Buying Goods and Services

THINK about the following situations. Could you correctly answer the questions they pose?

- Mr. LeClerc agrees to keep Mrs. Lee's sidewalk free of snow all winter. Though Mrs. Lee wants to pay her neighbour, he refuses to take any money for the job. Later, if Mr. LeClerc fails to live up to his bargain, will he have broken a contract? If he does clear the snow, can he later insist on being paid?
- Katja, a seventeen-year-old, orders lunch at a cafeteria, and arranges to get the meal on credit. In promising to pay next week, is Katja entering into a binding contract?
- Leon buys a new mountain bike and right away puts it through its paces over some extremely rugged terrain. When it doesn't perform as well as he'd hoped, Leon takes the rather battered bike back to the store and asks for his money back. Can he get it?



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As a consumer you'll have to deal with situations like these from time to time throughout your life, and it's important to know what your rights and responsibilities are. In this section you'll look at situations like these. When you're finished, you should be able to explain the basics of deposits, returns, warranties, and guarantees, identify the essential elements of contracts, describe the rights and responsibilities of minors, and explain what's involved in obtaining credit.

SECTION 1

Deposits and Returns



Mario and Kierstin are shopping for a new dishwasher. After checking out a number of appliance stores, they finally find one on sale.

“What a deal!” whispers Kierstin. “We’ll save over \$100 if we buy this one.”

“Hang on a minute,” Mario replies. “The sale ends today, but we won’t have enough money till you get paid next

week. Besides, the sign says “All Sales Final.” That means we can’t bring the dishwasher back if there’s anything wrong with it, doesn’t it?”

“But it’s such a steal! We just can’t pass it up. Maybe we can put down a deposit or something and hope for the best.”

Have you ever found yourself in a situation like this? If so, didn’t you wish you knew a bit more about your legal rights when making purchases? In this activity you’ll examine laws related to returns and deposits on the purchase of goods and services. Using this knowledge, you should be able to analyse cases to determine whether the purchase/return policies they exemplify are legal or not.

What Is a Deposit?

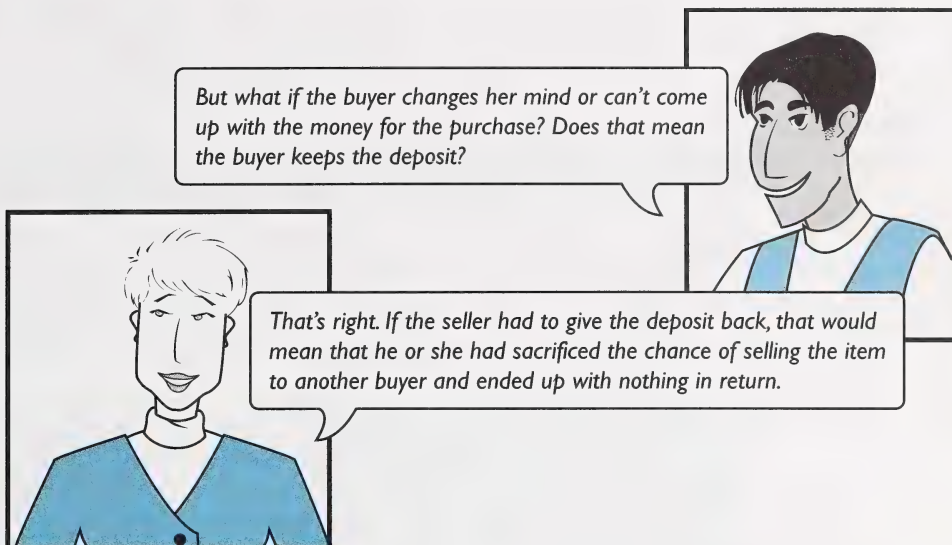
The situation described at the beginning of this activity occurs every day. Kierstin, knowing that the couple don’t have the money they need but not wanting to miss the sale, suggested putting a **deposit** down on the appliance. They might be able to do this, or they might not; it all depends on the policy of the store.

A deposit is money someone puts down on an item for sale on the understanding that the item will be held for a specific length of time. In other words, a shopper gives the store a percentage of the item’s cost in return for an agreement that the item won’t be sold to anyone else for the stipulated time.

When a deposit is made, one of the elements of a **contract** is in place between the buyer and seller. By making a deposit, the buyer is assured that the seller will hold the item. But since a contract must have two sides, the seller has to get something in return for giving up the chance of selling the item to someone else. What the seller gets is the deposit money.

▼
deposit: an amount of money given by a purchaser to a seller in return for which the seller agrees to hold an item for a stipulated time

▲
contract: a legally binding agreement between two or more parties



A fundamental principle of contract law—as you'll be studying shortly—is that each party to a contract must gain some benefit. The benefit the seller gets in the case of a deposit is the right to keep the deposit if the purchase is never actually made. Sellers, then, are under no legal obligation to return deposit money. Of course, some sellers may choose to return deposits to keep their customers happy; they may see this as a good business policy. They may even put this in writing—perhaps stipulating that they'll return the deposit under certain conditions. Remember, however, that they don't have to do this.

Here is a practical tip: If a salesperson tells you that a deposit is refundable should you change your mind about buying something, it's a wise policy to ask that this understanding be written on your receipt. Otherwise, you'll have no proof that the promise was ever made.

1. At the end of the skiing season Louis finds just the snowboard he wants at an unbelievable price. Putting down a deposit, Louis rushes home to get more money; but on the way back to the store, he finds another sports shop with even better prices on snowboards. He decides to buy a board at the second store and then goes back to the first one and demands his deposit back. What is this store's legal position?
2. Mrs. Popowich goes to her local grocery store and discovers the last basket of B.C. cherries in the produce department. Realizing that she doesn't have enough money to pay for them, she makes an agreement with the store manager whereby she leaves a \$2.00 deposit and he agrees to hold the cherries for her while she goes to a nearby banking machine for additional money. Mrs. Popowich doesn't return to the store until the next day, and by then the cherries have been sold to someone else.

- a. Was the store under any legal obligation to hold the cherries for Mrs. Popowich? Explain your answer?
- b. Is the manager required to return Mrs. Popowich's deposit?

Compare your answers with those in the Appendix, Section 1: Activity 1.

What Is a Return?

3. Take the Consumer Awareness Test that follows. You haven't studied this material yet; it's designed to discover what you already know.

- a. Sonia buys an electric bread knife, but when she gets it home and tries to cut some bread, it doesn't work. Can she take the knife back to the store and get her money back?
- b. Sherry buys a wool sweater. She mistakenly washes it in hot water, and it shrinks. Only later does she realize that the instructions on the label say "Dry clean only." Can Sherry return the sweater?
- c. Mr. Sousa tries to cut a metal pipe with his new rip saw, and in the process ruins the saw. Can he take the saw back for a refund?
- d. Emil buys a new shirt. The package says the shirt has short sleeves, but when he opens it up, Emil finds a long-sleeved shirt inside. Can he return the shirt and get a refund?



Compare your answers with those in the Appendix, Section 1: Activity 1.

The questions in the Consumer Awareness Test all involve instances of merchandise being returned to the store where it was purchased. It's this idea of returns that you'll be looking at next. As you've seen in the suggested answers, the whole matter of returns can become a little complicated, but here you'll look at a few very basic issues.

If a store agrees to **return**, this can involve any one of the following arrangements:

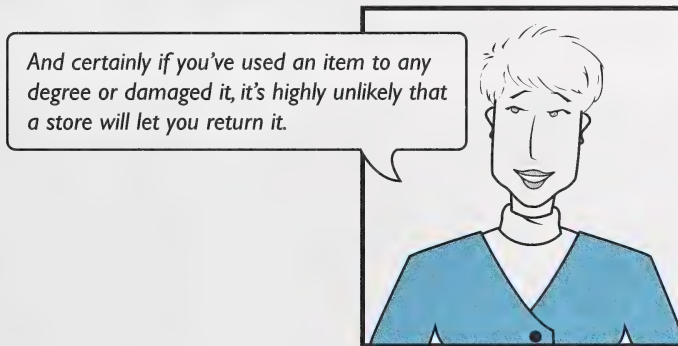
- You may be given a refund of the purchase price. In other words, you get your money back.



return: an arrangement whereby a seller accepts a purchased item back from the buyer in exchange for the purchase price, other merchandise, or a credit voucher

- You may be allowed an exchange. This means you return the item and choose another item in its place. If the new item you select costs more than the original, you'll have to pay the difference.
- You may be given a credit. When this happens, the store takes the item back and gives you a credit voucher with which you can buy something else from the store at a later date.

It's important to note that returning merchandise to a store is a privilege, not a legal right. There's no law that says that stores must accept returns. Once you've paid money for an item and taken it out of the store, you've completed a contract, and the store doesn't have to agree to a change of mind on your part later on. As a matter of practice, however, most stores do allow returns in certain situations, though some, like wholesale suppliers of building products, may retain a "restocking fee" of 10 to 15 percent. Of course it's up to each store to decide whether to grant refunds, exchanges, or credit vouchers.



Since different stores have different policies on returns, it's important for customers to find out what those policies are before making purchases. Some stores post signs that explain their return policies; others don't. Ultimately it's up to the customer to find out what each store's policy is. Before buying an item you think you might possibly wish to return,

- watch for signs explaining return policies
- ask sales personnel about return policies
- get all promises in writing

Since policies on returns can vary significantly from store to store, it's important to know just what they involve. Following are four typical situations you might encounter:

- Sometimes stores set time limits and/or allow exchanges only.

EXCHANGES ONLY —
WITHIN SEVEN DAYS OF PURCHASE DATE

NO REFUNDS GIVEN

- Often stores insist on a receipt as proof of purchase.

WE GIVE REFUNDS

All merchandise must be in original condition and
returned within 10 DAYS accompanied by
A CASH REGISTER RECEIPT

- Frequently stores won't take back merchandise bought on sale.

ALL SALE ITEMS FINAL

NO RETURNS—NO EXCHANGES

- For reasons of hygiene, stores don't ordinarily grant returns or exchanges on items like earrings for pierced ears, underwear, or bathing suits unless they're in sealed packages that have obviously never been opened.

***FOR SANITARY REASONS
NO RETURNS ALLOWED
ON BATHING SUITS***

Now answer the questions that follow.

4. On November 15 Kim spots a pair of gloves that would go perfectly with her grandmother's grey coat. The store has a sign saying no returns after ten days. Kim buys the gloves and puts them away for a Christmas present. On Christmas day her grandmother opens them and wears them that evening. During the course of the evening one of the gloves rips badly, so the very next day Kim marches back to the store receipt in hand. What satisfaction can she expect to get at the store?



5. Companies aren't legally obligated to accept returned merchandise. Why, then, do most stores have policies in place whereby they do, in fact, allow returns under certain conditions?

Compare your answers with those in the Appendix, Section 1:Activity 1.

In this activity you've taken a quick look at the basic legal issues surrounding deposits and returns. One of the concepts that came up during this discussion was that of the contract. Now that you've got your feet wet, so to speak, in the area of consumer law, it's time to dive in a bit deeper and look into the whole matter of contracts somewhat more fully. This is what you'll be doing in Activity 2.

ACTIVITY 2

Making Contracts



If you think back to Activity 1, you'll recall that the notion of a contract between a buyer and seller was mentioned. The fact is that, whenever you purchase goods or services, you and the person or company selling them to you are entering into a contract. Whether they realize it or not, most people enter into contracts every day. Whenever you buy a lunch at a fast-food restaurant, take a ride on a bus, go to a movie, or subscribe to a CD club, you're making a contract.

OK, I can see how if I subscribe to a CD club I'm making a contract. I sign up and promise to buy so many CDs, and the company promises to sell them to me. But riding on a bus?!

That's right. As you'll find out, not all contracts have to have their terms spelled out. Sometimes you agree to a contract simply by your behaviour. Read on.



1. Before continuing, think of as many situations as you can in which, on a typical day, you're likely making a contract with another party. If you're working with a study partner, brainstorm for ideas.

Compare your answer with the one in the Appendix, Section 1: Activity 2.

Implied and Express Contracts

As you were told in Section 1, a contract is a legally binding (and enforceable) agreement between two or more parties. Basically, there are two types of contracts:

express contract: a contract in which the terms are specifically laid out

implied contract: a contract that is suggested by the actions of the parties

- **Express contracts** are agreements in which the terms are specifically laid out orally or in writing. When you agree to buy a used truck for \$5000 or to shovel a neighbour's snow all winter for \$100, you've created an express contract.
- **Implied contracts** are agreements in which the terms are evident from the circumstances. When you order a hamburger or give your money to a bus driver, you're making an implied contract. In the first case, you're agreeing to pay the asking price for the burger, and in the second case the driver is agreeing to drive you to your destination—providing it's on the route.



2. Create a chart like the following one and use checkmarks to indicate whether each contract is implied or express.

TYPES OF CONTRACTS		
Contract	Implied	Expressed
Getting a haircut		
Buying a limited edition print		
Buying a used vehicle		
Buying a bag of chips		
Renting two videos		

3. Now go back to your list in question 1 and indicate whether each type of contract you listed is express or implied.

Compare your answers with those in the Appendix, Section 1: Activity 2.

What Makes a Valid Contract?

Although contracts may be express or implied, you don't make a contract that's enforceable at law every time you agree to do something. In fact, for a contract to be valid, it must meet a number of criteria.

4. Tell whether you think each of the following is a valid contract that the courts would enforce.
- Andreas asks Monica for a date on Friday night. Monica agrees to go.
 - Four-year-old Jessica agrees to give her brother the \$20 she found in return for a chocolate.
 - Jason and Paulo agree to split the profits from a drug sale they're planning.
 - Imelda's father promises to give her a car when she turns eighteen.
 - Joan's boyfriend threatens to leave her alone and pregnant unless she sells him her car for \$500.



- f. Marie, very angry, shouts "I'd sell this stupid computer for five bucks!" Lloyd pipes up "Sold!"
- g. Mrs. Lee offers to sell her boat to Mr. Zalinsky for \$800 and Mr. Zalinsky accepts the offer.

Well, which agreements do you think are valid contracts? The fact is that only the last one would be held up by the courts. To discover why, read on.

To be a valid enforceable contract, any agreement must have five elements. These are explained in what follows.

▼
offer: *a proposal to enter into a contract*

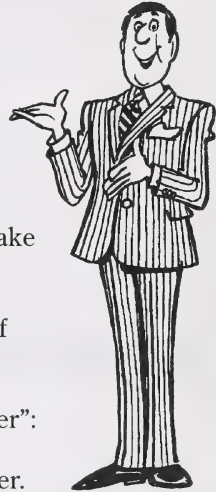
acceptance: *the assent to a definite offer*

- **Element #1—Offer and Acceptance:** There must be a genuine **offer** and a genuine **acceptance** of that offer. The offer must be clear, exact, and intended seriously as an offer. The acceptance has to be unqualified and clear, and it has to agree with the precise terms of the offer.

Here's an example of a clear offer and acceptance: "I'll sell you these hockey skates right now for \$100." (offer). "I'll take them right now for that amount." (acceptance).

Now here's an example of an unclear offer: "I'm thinking of putting my house on the market for around \$100 000."

And here's an inadequate acceptance of the preceding "offer": "Tell you what: I'll give you \$85 000 for it." This is not an agreement to the original offer; rather, it's a brand new offer.



▼
consideration: *something of value exchanged by the parties to a contract*

- **Element #2—Consideration:** There must be **consideration** on both sides—a legal term meaning something of value. Consideration can be money, goods, services, or something else. It can't, however, be something abstract like love or gratefulness. It also can't be for something done in the past. In other words, if you shovelled your neighbour's walk as a favour last winter and your neighbour today promised you \$20 for doing it, no contract has been made. There must be consideration on both sides at the time of the agreement.



So if I promise you a gift and then back out of it, the courts can't make me pay?



That's right. You simply promised me a gift. Because I never agreed to give you something of value in return, there was never a contract.

capacity: the legal ability to enter into a valid contract

minor: a person under the age of majority—the age at which he or she can assume a legal obligation (in Alberta, eighteen)

- **Element #3—Capacity:** The parties to a contract must have legal **capacity**—or be legally competent—that is, they must be considered by law to be capable of handling their own affairs. **Minors**, people with mental disabilities, and people who are intoxicated, for instance, can't make contracts (with some exceptions). This is meant to protect them from others who might take advantage of their immaturity or inability to make sensible decisions.

But earlier it said whenever I buy goods and services I'm making a contract. Now it seems I can't make a contract because I'm too young. Which is it?



Good question. As a rule minors can't be held to their agreements, but there are exceptions. You'll be looking at these shortly.



- **Element #4—Legal Purpose:** The purpose of every legally enforceable contract must itself be legal. If a retailer tries to sell a “hot” video game to a customer, the contract wouldn't stand up. Similarly, if a woman pays someone to murder her husband and the hit man doesn't do the job, she can't take him to court for **breach of contract**.

breach of contract: failure to perform an obligation in a contract

- **Element #5—Genuine Consent:** There must be genuine consent on both sides. For example, intimidation or misrepresentation (lying) can't be present.

5. On a blank piece of paper trace an outline of your hand. Then, in each finger (and thumb) write in one element of a contract. Refer to your hand diagram whenever you need to refresh your memory of the five elements of a contract.

6. Mr. MacLeod hated wrestling with his lawnmower, so he entered into a contract with Janine. She'd cut his lawn once a week for the months of July and August and he'd pay her \$150 at the end of that time.



Construct a chart like the one that follows and complete it by indicating the essential contractual elements in the agreement between Janine and Mr. MacLeod. The chart has been started for you.

Element	What It Is
Offer and Acceptance	<i>Mr. MacLeod's offer is to pay Janine to mow his lawn once a week for two months. Janine agrees to do this, thereby clearly accepting the clear offer.</i>
Consideration	
Capacity	
Legal Purpose	
Genuine Consent	

7. Go back to question 4 and explain why each of the first six contracts wouldn't be valid.

Compare your answers with those in the Appendix, Section 1:Activity 2.

Simple Contracts and Specialty Contracts



Basically there are two types of contracts.

▼
specialty contract: *an agreement signed and under seal*

seal: *a marking placed on a written contract to express serious intent*

▲
simple contract: *any contract—implied, oral, or written—that is not under seal*

- **Type #1—Specialty contracts** (or contracts under seal): These are contracts that according to law must be written out. Examples of specialty contracts are mortgages, property deeds, and long-term leases. Specialty contracts differ from most in that they—and they alone—may lack consideration because the courts assume that if you've taken the time to write out or study a document and signed it you're not simply making an impulsive promise. Specialty contracts are the only agreements that are enforceable without consideration.

- **Type #2—Simple contracts:** These are all contracts that don't fall into the first category. The vast number of contracts people make are simple contracts, and they're the type you'll be principally concerned with here.

8. As you've been told, some contracts have to be written under seal—any contracts having to do with the sale of land, for instance. Suggest a reason why in instances of this sort it's important to have everything in writing, signed, sealed, and dated.

Compare your answer with the one in the Appendix, Section 1: Activity 2.

And that's your very quick look at contracts. Of course contract law is vastly more complex than this—in fact, it's one of the most intriguing areas of legal studies. But at this point what you have to be most aware of is that throughout your life you'll make many contracts almost every day; and once you're of legal age, you'll almost always be held responsible for the deals you make. What the situation is before you hit the age of majority will be the topic of the next activity.

ACTIVITY 3

When Minors Make Purchases



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In the last activity you discovered that in most situations minors—people under the age of majority—can’t make contracts that are legally binding upon themselves. This is to protect them from being taken advantage of by others. People who are developmentally challenged, impaired, or under the age of majority are the three groups the law treats this way; it’s the last of these three groups that is of interest here.

Put simply, the law protects minors by preventing them from being bound by contracts against their will—in most instances. That means that if a sixteen-year-old boy, for example, contracts to buy a mountain bike, puts down a deposit on it, and then, when he gets home, realizes he’ll never be able to pay for the bike, he can go back to the store and cancel—or **repudiate**—the contract. Of course he’ll have to return the bike, and he can’t expect to get the deposit back, but he can get out of the deal. What’s more, as long as he hasn’t deliberately damaged the bike, he can’t be charged for any wear and tear it suffered while in his possession.

▼
repudiate: *reject
or disclaim a
contract*



That sounds great, but I can see a problem here. I mean, if merchants know this stuff, they may not want to make deals with minors.



Yeah, that's right. So what happens if say a seventeen-year-old is living alone—and maybe even supporting a kid—and she needs food or clothes and tries to buy it on credit? The stores might figure they'd get burned and refuse to sell her anything.



That's an excellent point. And for that reason the law distinguishes between **necessaries** and **non-necessaries** when it comes to minor's contracts.



▼
necessaries:
goods and services considered essential for a person's health and well-being

▲
non-necessaries:
goods and services not considered essential for a person's health and well-being

In order to avoid situations like the one described above, the law does insist that if minors make contracts for the purchase of necessities—things people need on a daily basis—these contracts are binding. The courts consider the following items to be necessities:

- food
- clothing
- shelter
- medical services
- education

That means that a merchant can safely contract to sell these things to a minor, providing a reasonable price is charged. The law won't, for example, allow a merchant to take advantage of minors' inexperience by grossly overcharging them. In enforcing a contract for a necessary, the courts will insist that minors pay only reasonable prices for things they contract to buy.

Based on the preceding material—and in some cases your own ideas—answer the following questions.

1. James, a seventeen-year-old boy, rents a modest apartment, but at the end of the month he moves out, claiming he can't pay the rent. Can his landlord enforce this contract in court? Explain.
2. Sixteen-year-old Bruno buys a drum kit on credit. A week later he returns it with one of the skins broken. Can the merchant get any compensation? Explain.

Ethics



3. Heddi, a teenaged girl, wants to buy an expensive camera. The merchant hesitates to do business with her because he suspects she's a minor and may renege on the deal. The girl, who is, in fact, seventeen, tells the merchant she's eighteen, so the sale is made. If the girl later tries to get out of her bargain, do you think the courts should hold her to it because she lied? Explain your answer.
4. "If a minor makes a contract with a merchant, his or her parents will be held liable for it and forced to pay any amount owing."

- a. Do you think this statement is true?
- b. Do you think it ought to be true? Explain your reasons.

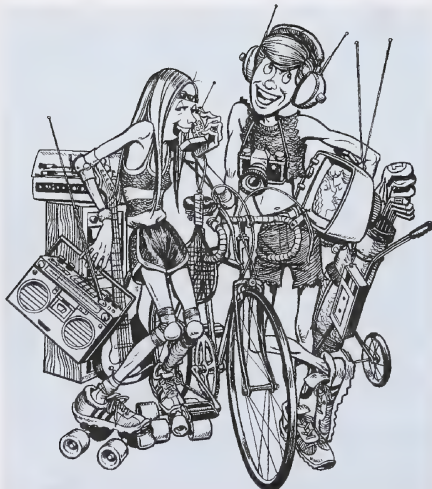


Ethics



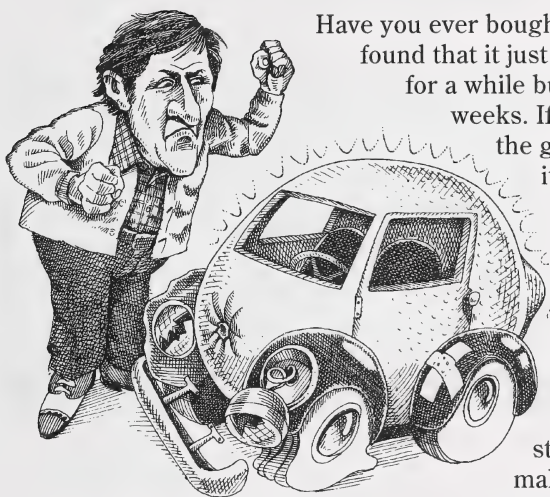
5. Imagine yourself a merchant about to make a contract for sale with a minor for non-necessaries. What steps would you take to protect yourself?

Compare your answers with those in the Appendix, Section 1: Activity 3.



In this activity you've looked at the rights and responsibilities of minors when making contracts—specifically contracts of purchase. You've seen how the courts distinguish necessities from non-necessaries and enforce minors' contracts only when necessities are involved: food, clothing, shelter, medical services, and education. The next activity looks at another aspect of buying and selling goods—warranties and guarantees.

Warranties and Guarantees



Have you ever bought something, brought it home, and found that it just didn't work? Or perhaps it worked for a while but broke down in a couple of weeks. If so, you probably went looking for the guarantee that came with the item—the one you most likely threw out by accident along with the sales slip when you first opened the box.

A **warranty** is a promise—made by a manufacturer or by a retailer—to the effect that the goods being sold meet a certain standard. Normally the party making the warranty promises to replace or repair the product if it fails to live up to that standard for a stipulated period of time after the purchase.

▼ **warranty:** a promise by a manufacturer or retailer that goods being sold meet a certain standard ▲

▼ **express warranty:** an explicit, clearly stated warranty that's usually written down

implied warranty: a warranty that a seller may not actually make but which the law says is part of the contract anyway

guarantee: another name for an express warranty ▲

Remember how contracts can be either express contracts or implied contract? Well warranties are likewise either **express warranties** or **implied warranties**.

Express Warranties

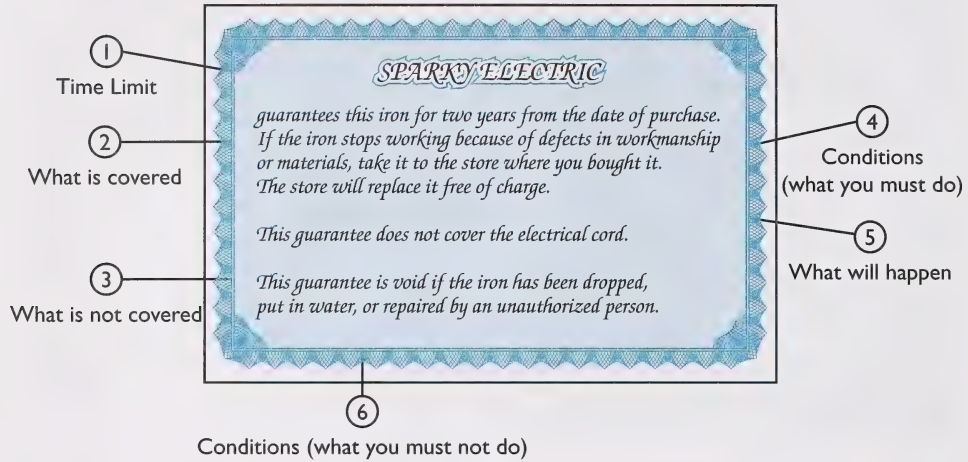
An express warranty, commonly called a **guarantee**, is generally a promise that's written down, usually on a certificate that comes with an item you buy. Such a guarantee may allow a consumer several recourses if the item purchased is defective. The consumer may be able to

- get the item repaired (You may have to take or send it to an authorized service centre.)
- get a refund
- replace the item with another one
- bring a legal action against the manufacturer or retailer if that party fails to live up to its promise

1. Have you ever been in a situation where you made use of an express warranty to deal with a defective piece of merchandise? If so, explain the situation and tell how it worked out. Were you satisfied with the results?

Compare your answer with the one in the Appendix, Section 1: Activity 4.

Regardless of the remedies open to a purchaser, good warranties all have several things in common. The diagram that follows illustrates six of these features.



2. Reiko bought a pair of Sharply scissors from a discount warehouse. When he got home, he noticed a guarantee inside the package. It read as follows:



- a. Draw a chart like the one that follows and fill it in for Reiko's pair of scissors.

REIKO'S GUARANTEE	
Time limit	
What is covered	
What Reiko must do	
What will happen	
What Reiko must not do	

- b. Can you see any problems or omissions with this guarantee? Try to suggest two.

Compare your answers with those in the Appendix, Section 1: Activity 4.

Implied Warranties



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▼
statute: law
passed by a
government

▲
legislation: laws

Whenever you buy something, you're protected by more than the express warranty, or guarantee, that may have come in the box. Merchants in Alberta and other provinces in Canada are also obliged to make certain unspoken, or implied, warranties about the goods they sell. These implied warranties are laid out in the *Sale of Goods Act*. This is a provincial act, or **statute**, but each province has similar **legislation**.

According to the *Sale of Goods Act*, sellers must promise that the following is true about the merchandise they sell:



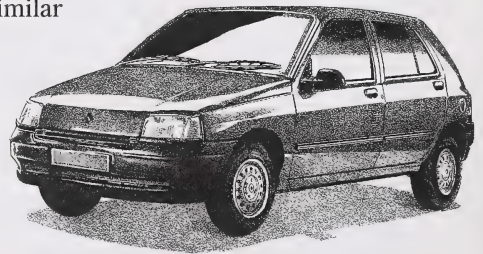
merchantable quality: *suitable for sale*



- The seller has legal title to the goods and has the right to sell them.
- The merchandise is of **merchantable quality** and is suitable for the required purpose.
- The items being sold are similar to any samples or descriptions provided by the merchant.



3. Shoel goes to a hardware store and buys a combination blade for his table saw. When he gets home and tries to make some fine cuts for a cabinet he's building, he finds the blade chews up his expensive wood. Do you think Shoel would be able to bring a claim against the store for selling him a blade that was unsuitable for his purposes? Explain your answer.
4. Gina wants a new car. She finds one she likes, test drives it, and decides to order a similar one. However, she wants it to be candy-apple red with black upholstery. Assured by the saleswoman that this is no problem, Gina orders the car.



Three weeks later Gina's car arrives, but it's maroon, not red, and the upholstery is grey. Can Gina refuse delivery of the vehicle? Explain.

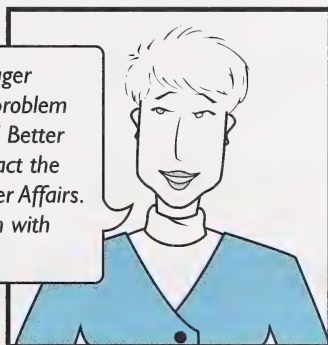
Compare your answers with those in the Appendix, Section 1: Activity 4.

And that's your look at warranties and guarantees. Most often it's the express warranties written out by manufacturers that consumers make use of when merchandise proves faulty. Always be sure to read those guarantees carefully and to put them away someplace safe. Sometimes the manufacturer requests that you mail in a card when you purchase an item to register your ownership and the date of purchase with the company. This can seem a nuisance at the time, but it makes getting action on any guarantee much easier if, down the road, the item malfunctions.



Before we end this section, I have a question. If a consumer runs into real problems with a merchant or someone—like, say, if the guy won't live up to a guarantee or something like that—what should the consumer do?

Good question. The best thing is to contact the owner or manager of the business; a nice, formal business letter explaining your problem will likely get some action. If that fails, try contacting your local Better Business Bureau or Chamber of Commerce. You can also contact the Alberta Municipal Affairs division called Housing and Consumer Affairs. Someone should be able to give you advice or get you in touch with an agency that can solve your problem.



Personally I'd contact one of those troubleshooter guys on the TV news. Once a company gets that kind of bad press they usually fall all over themselves making things up for the consumer!

In the next activity you'll look at another aspect of consumer law—credit, defaulting, and bankruptcy.

ACTIVITY 5

Obtaining and Using Credit

Using Credit

▼
credit: money (or goods or services) advanced to another for repayment at a later time
▲

Do you buy things on **credit**? Does your family? If you're a minor now, do you think you'll use credit extensively when you're an adult?

Whatever your views on credit, the fact is that nearly every adult Canadian uses it in one form or another. When people buy goods and services such as telephone, gas, and electricity and pay for them at the end of the month, they're using credit. Many Canadians have loans from institutions such as banks and credit unions—another form of credit. Some people buy automobiles, furniture, and appliances on credit, and many college and university students finance their education with student loans. All of these are types of credit. Credit is simply the advancing of money, goods, or services to people on the understanding that they'll pay for them at a later date.



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Yeah, like those TV ads that say "DO NOT PAY UNTIL SPRING." I can never figure out why people would want to buy something now and then have to start paying for it much later when it isn't new anymore. I'd rather pay now and get it over with.



That's very wise, but many people find the idea of getting something without paying for it now attractive. And, of course, if you really do need something now and just don't have the money, being able to buy it on credit can be a lifesaver.





1. Using credit to buy things has its advantages and disadvantages. Make a chart like the one that follows and complete it by listing as many advantages and disadvantages as you can to using credit. If you have a study partner, brainstorm for ideas.

USING CREDIT	
Advantages	Disadvantages

Sources of Credit

Many businesses and institutions will lend money. Remember that when you buy goods or services on credit, you are, in effect, borrowing money. Lending money can be a very profitable venture for the lender; consequently, the competition to attract clients is great.

How much do you know about obtaining credit? There are many sources of credit available to consumers.



2. List as many sources of credit as you can. If you can, brainstorm with a study partner.

Compare your answers with those in the Appendix, Section 1: Activity 5.

Obtaining Credit

credit rating: a personal financial profile detailing a person's history of taking out and repaying loans

credit bureau: a business that provides lenders with information about the credit history of prospective borrowers

Young people often find it difficult to get credit—at precisely that time in their lives when they probably most need it. That's because they have no proven track record in repaying loans, and lending institutions naturally don't like taking risks about this sort of thing. As people get older, however, and develop a history of borrowing and repaying money, they develop what's called a **credit rating**—a personal financial profile indicating how reliable they are at repaying debts. Your credit rating is available to lenders at the **credit bureau**.



It's ironic that if you manage your money so well you never have to borrow, you won't develop a credit rating; and lenders will look at you as a worse risk than people who are constantly going into debt—as long as they always repay their loans.

Obtaining credit usually involves a three-step process:

- The would-be borrower approaches a lending institution and completes a credit application form.
- The lender investigates the borrower's credit history.
- The lender evaluates the borrower and makes a decision.

Step 1: Completing a credit application form

- Following is a typical application form for a bank loan. Imagine that you've approached the bank for a loan of \$2000 to buy some second-hand sound equipment for the band you and some friends are starting up. Photocopy the form and fill it in as well as you can, making up any reasonable information you need to (or, if you don't have access to a photocopier, fill in the form in this booklet using a light pencil).

Loan Application											
General Information											
For what purpose do you require this loan? _____											
How much do you wish to borrow? \$ _____	Over how long (years)? _____	What monthly payment do you wish to make? \$ _____									
Have you previously had a loan? <input type="checkbox"/> Yes <input type="checkbox"/> No											
If Yes: Branch _____ Loan Number _____ Balance (if any) _____											
<input type="checkbox"/> Do you wish to add to this loan?		or <input type="checkbox"/> Do you wish a separate loan?									
Personal											
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other _____											
Last Name: _____		First Name and Initial _____									
Street Address: _____ City: _____											
Province: _____		Postal Code: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table> How Long? _____ years (<table border="1" style="display: inline-table; width: 50px; height: 20px; vertical-align: middle;"></table>) <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table>									
Residence Telephone No.: <table border="1" style="display: inline-table; width: 150px; height: 20px; vertical-align: middle;"></table>											
Previous Address (if less than two years at present address):											
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Postal Code: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table></td> <td style="width: 25%;">Social Insurance No. (optional) <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table></td> <td style="width: 25%;">Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed(er)</td> <td style="width: 25%;"></td> </tr> <tr> <td>Number of Dependents: _____</td> <td>Spouse's Last Name: _____</td> <td>First Name and Initial: _____</td> <td>Date of Birth: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table></td> </tr> </table>				Postal Code: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table>	Social Insurance No. (optional) <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table>	Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed(er)		Number of Dependents: _____	Spouse's Last Name: _____	First Name and Initial: _____	Date of Birth: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table>
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Number of Dependents: _____	Spouse's Last Name: _____	First Name and Initial: _____	Date of Birth: <table border="1" style="display: inline-table; width: 100px; height: 20px; vertical-align: middle;"></table>								

Income

Name of Employer: _____ Occupation/Title: _____
Telephone Number _____ Employee's Gross Monthly Income: _____
Employer's Address: _____ () _____ \$ _____
How long employed? _____ years Where did you work before? _____
Spouse's Employer Occupation/ Title: _____ How long employed? _____ years
(if applicable): _____ Telephone Number _____ Employee's Gross Monthly Income: _____
Employer's Address: _____ () _____ \$ _____
Other Income Source(s) and Amount(s) _____

Financial Information

Where do you bank?

Name and Address of Institution

Name and Address of Institution

☐ Chequing ☐ Savings Account Number: _____

Name and Address of Institution

☐ Chequing ☐ Savings Account Number: _____ Balance \$ _____

Do you have any of the following? (Please provide estimated values.)

Real Estate: _____ Vehicles: \$ _____ Cash/Term Deposits and Investments: \$ _____

What are your obligations?	Name of Creditor(s)	Balance	Monthly Payments (including taxes)
Mortgage(s) or Rent			
Personal Loans			
Credit Cards			

When and where may we conveniently contact you during business hours?

Best Day: _____ Best Time: _____ ☐ At Home ☐ At Work

After completing this form, please sign below and return your application to your bank.

_____ X _____ X
Date Signature of Borrower Signature of Joint Borrower
(if joint application)

Compare your answer with the one in the Appendix, Section 1: Activity 5.

Step 2: Investigating the borrower's history

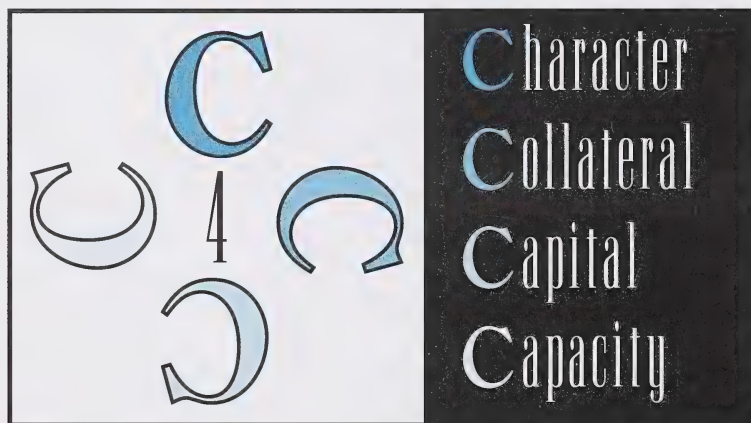
The second stage in the credit-application process is an investigation of the applicant by the lender. This is where the lender is quite likely to contact a credit bureau to determine the state of the applicant's credit rating. The lender may also contact the candidate's employer and look into any data regarding bank account balances, home ownership, and any other assets the candidate might possess.



Step 3: Evaluating the application

In the final stage of the process the lender sizes up the would-be borrower and assesses the risks involved in lending money to him or her. Then a decision is made. Normally the decision is based on what are often called the four Cs of credit: character, **collateral**, capital, and capacity.

collateral: assets used to secure a loan (If the loan isn't repaid, the lender keeps the assets.)



Character is determined by looking at your past history of financial dealings. Have you paid your bills and have you paid on time? Character is your honesty, integrity, and willingness to meet your financial obligations. This information can usually be obtained from a credit bureau.

Capacity is your ability to repay the borrowed amount. It is based on your employment and debts you may have incurred.

Capital measures your financial worth and is determined by whether you own a home, a car, furniture, or if you have savings, life insurance, investments, or stocks.

Collateral includes assets like a house, car, stocks, insurance, and bonds that are used to secure a loan. Collateral serves as security to guarantee the loan. If you do not pay the loan, the financial institution has a claim on the item you used as collateral.

4. Look at the loan application you made in question 3. Now think of yourself from the point of view of the lending institution you've approached for the loan. Would you consider yourself a good risk in the institution's eyes? Explain why or why not.

Compare your answer with the one in the Appendix, Section 1: Activity 5.

Defaulting on a Loan

▼
default: fail to carry out an obligation you've contracted to do
▲

Remember Activity 2, where contracts were explained? Well, if you agree to borrow money, you're making a contract with the lender; and if you **default** on your side of the bargain, the lender can take action against you. In other words, if you don't repay the money—along with any agreed-upon interest—when you'd promised to, you should expect the lender to take steps to make you stick to the deal.

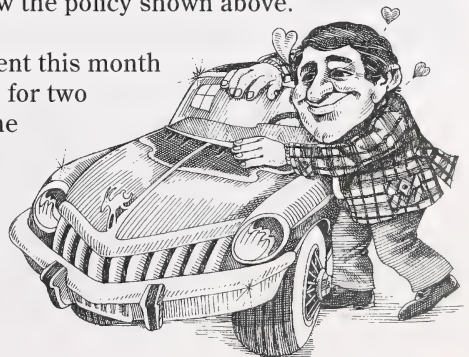
Here's a sample excerpt from a loan agreement explaining what obligations a borrower has if he or she defaults on the loan:

▼
maturity: the date at which a total amount borrowed is due
▲

Where the loan is not repaid at **maturity** or a payment is not made when due, the following charges **may** be imposed:

- interest on payments or repayments that are not made when due
- legal costs resulting from actions to collect payment or repayment in respect of the loan
- reasonable costs, including legal fees, incurred by or on behalf of the Company and paid to persons other than employees of the Company in order to protect or realize the security given in respect of the loan

5. In each of the following situations, what would you do as a credit manager of the lending company if you had to follow the policy shown above.
- a. Jeremiah failed to make a car payment this month because he was laid off from his job for two weeks. He phoned the bank to say he would be unable to make the payment. What would you do? Why?



- b. Sara has failed to make six payments on her new sofa set that she bought through your company. No attempt has been made to contact you, and efforts to contact Sara at home have been unsuccessful. What would you do? Why?

Compare your answers with those in the Appendix, Section 1: Activity 5.



garnishee

wages: legally take all or part of a debtor's wages until the debt is paid

Declaring Personal Bankruptcy

Have you ever been unable to pay back someone who'd lent you money? Many people have experienced this situation; and when the amount is significant, they can face real financial crisis.

If you, as a consumer, do find yourself in a situation where you've used credit and simply can't live up to your obligation to repay the amount and the interest owing, what should you do?

6. Imagine yourself having signed a loan agreement and being unable to repay the loan. What steps would you take?

Compare your answer with the one in the Appendix, Section 1: Activity 5.

There are several steps consumers can take when they find themselves in a situation where they simply can't repay their debts. Here are three of them:

- They can communicate with their creditor (lender) and explain the situation. Perhaps they can work out new terms of repayment. Remember, it's in the lender's interests to have you repay the loan; so if revising the terms increases this likelihood, the lender will probably go for it.
- If there are several loans involved, consumers can consider seeking help in consolidating them into one loan. For example, if you have loans on credit cards—which normally carry a high rate of interest—you may be able to borrow from another institution at a lower rate and use this money to pay off the cards. Then you can more easily pay off the consolidated loan at its lower rate.
- Consumers who simply can't meet their financial responsibilities through other means can choose to declare **bankruptcy**.

▼
bankruptcy: a legal situation in which a debtor turns most of his or her assets over to an official and is absolved from further proceedings against him or her
▲

Bankruptcy is a legal situation in which you assign all your assets, except some that are exempt by law, to a licensed "trustee in bankruptcy." This process relieves you of most debts and protects you from legal proceedings against you by creditors.

Bankruptcy is a legal process regulated by the *Bankruptcy and Insolvency Act*. The purpose of the act is to permit honest debtors to obtain discharge from their debts, subject to reasonable conditions. If you're thinking about declaring bankruptcy; this is the process the act lays out.



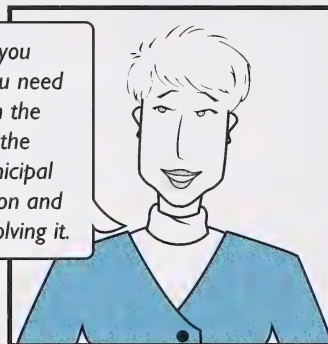
- First, you may make a proposal to your creditors to reduce the amount of your debts, extend the time you have to pay off the debt, or provide some combination of both. This is called a *consumer proposal* under the Bankruptcy and Insolvency Act.
- If a consumer proposal doesn't work, you may declare bankruptcy. After "Assignment" and "Statement of Affairs" forms are signed, your property is given to a trustee in bankruptcy who then sells it and distributes the money among your creditors. In the assignment you state that you're handing over all of your property to the trustee for the benefit of your creditors. In the statement of affairs you list your assets, liabilities, and expenses; and you answer several questions about your family, employment, and recent dispositions of assets.

7. In each of the following situations, decide whether the people involved should declare bankruptcy, consider a consumer proposal, or take some other steps. In each case give your reasons.
- Mike hasn't found a job since he finished university one year ago. His accumulated debt is \$45 000 in student loans, credit cards, and car payments. What should he do?
 - Josée has a full time job that pays \$8.50 an hour. She's found it difficult to make ends meet since purchasing a car on credit. What should she do?

Compare your answers with those in the Appendix, Section 1:Activity 5.

Declaring personal bankruptcy is a serious business; the decision to do so isn't one to be made lightly. On the positive side, it does mean that your creditors will get something back of what they lent you and your own slate will be wiped clean so you can start over again. On the negative side, however, it means that you'll lose most of your assets and for a while you'll have a very poor credit rating.

If you're contemplating bankruptcy—or if you simply have serious debt problems that you need help solving—you can get counselling from the Housing and Consumer Affairs Division of the Alberta Government's Department of Municipal Affairs. A counsellor will assess your situation and help you take the steps necessary for resolving it.



And that's your very brief look at the business of getting and using credit. Remember that while credit can sometimes be a lifesaver, overusing it can cause tremendous problems down the road. Wise consumers use credit sensibly and sparingly. If you do this, you'll avoid a great deal of the financial problems that beset many people in our society, and you'll likely never have to resort to declaring personal bankruptcy.

FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you to the Enrichment.



You've been introduced to quite a number of legal terms in this section. The question that follows should help test your mastery of these terms. Be sure to review any that give you trouble.

1. Match the following terms with the appropriate definitions.

- | | | |
|---------------------|---------------|-----------------------|
| a. deposit | f. credit | j. minor |
| b. contract | g. default | k. specialty contract |
| c. express contract | h. return | l. necessities |
| d. consideration | i. bankruptcy | m. implied warranty |
| e. express warranty | | |

- i. a legally binding agreement between two or more parties
- ii. money (or goods or services) advanced for payment at a later date
- iii. an agreement in which the terms are specifically laid out
- iv. an amount of money given by a purchaser to a seller in return for which the seller agrees to hold an item for a stipulated time
- v. a promise that a seller may not actually make but which the law says is part of the contract
- vi. something of value exchanged by the parties to a contract
- vii. an arrangement whereby a seller accepts an item back in exchange for credit, the purchase price, or other merchandise
- viii. fail to carry out an obligation you've contracted to do
- ix. a clearly stated promise by a seller or manufacturer that's usually written down
- x. an agreement that must be signed under seal
- xi. a person under the age of majority
- xii. goods and services considered necessary for a person's well-being
- xiii. a situation in which a debtor turns assets over to an official and is freed of legal proceedings against him or her

Warranties come in two types: express and implied. Express warranties are the type with which most consumers are familiar. They're explicit promises made by a seller or manufacturer about the quality of the merchandise being sold. They're generally written down and stipulate a time frame within which they're valid. They also generally instruct purchasers what to do if there are problems with the merchandise.

- Following is an express warranty for an appliance bought by Juanita Thomson. Unfortunately, it isn't very well written. Examine the warranty and suggest **three** of its shortcomings.

WARRANTY

If defective, the appliance will be repaired or replaced free of charge (not including parts and labour).

In some instances there will be a charge for the costs of shipping and handling.

Contracts fall broadly into two categories. Express contracts are agreements, either written or spoken, in which the terms are clearly stated. Implied contracts are agreements in which the actions of the parties are taken to indicate a contract.

- You hail a taxi in Calgary, jump in, and say "Foothills Hospital." The driver, saying nothing, puts the car into gear and off you go. Has a contract been established? Explain your answer.



To be valid, contracts must have several elements present. They are

- offer and acceptance
 - consideration (except for specialty contracts)
 - legal purpose
 - genuine consent
- Which of these elements is missing in the following scenario?

Eighteen-year-old Alana very much wants to have her younger brother's videotape collection. She tells him that if he doesn't sell it to her for \$50 she'll tell his girlfriend where he really was last Saturday night.

The law doesn't allow minors to be bound by agreements they make except for what the courts call necessities. This is to protect young people from making bad bargains due to inexperience while at the same time ensuring that if they really need something basic to survival, merchants will be willing to do business with them.

5. Fifteen-year-old Hans orders a correspondence course in designing websites on the Internet, but then refuses to pay for the materials even though he's badly damaged them. Will he be legally required to live up to his contract? Explain why or why not.

Compare your answers with those in the Appendix, Section 1: Extra Help.

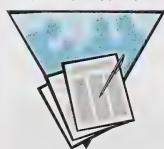
Enrichment

Do **one** or **more** of the following:

Task Management

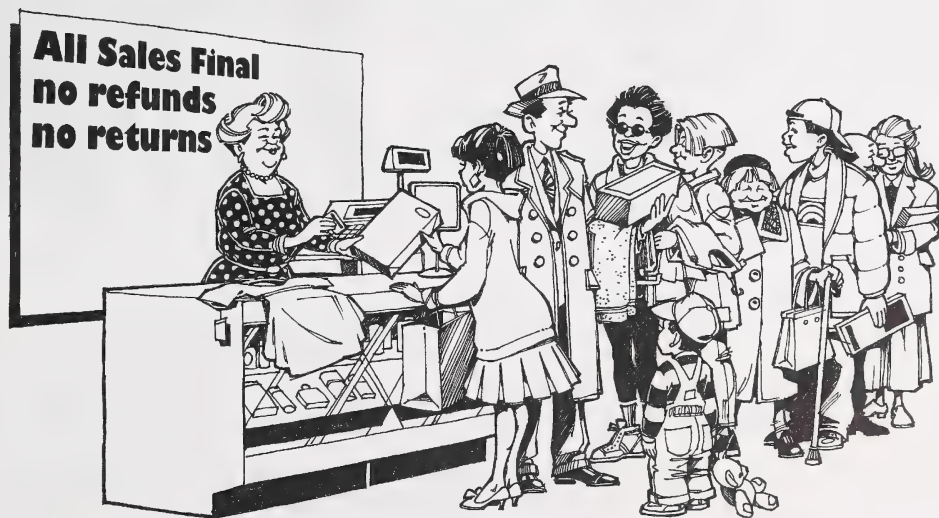


Communication



1. The Better Business Bureau is an organization that promotes good relations between consumers and businesses. Contact the Better Business Bureau in your area (the number will be in your phone book) and inquire about at least **three** services that it provides. Explain that you're a Legal Studies student and are researching information on consumer law. Be prepared with a pen and paper, and think out well in advance just what questions you intend to ask. Remember to be polite and to thank the person you've spoken with for his or her time.

When you've obtained the information you're after, write up your findings in a brief report.





2. Visit several stores in your community and ask if you can briefly interview the manager or a senior employee. Try to find out how the store handles consumer complaints. Does the store deal with the Better Business Bureau in your area? With the local Chamber of Commerce? Why or why not? What recommendations does the person you're interviewing normally give to dissatisfied customers?

Report your findings in a chart. You can create one like the example that follows, or you can design one yourself.

Store	Complaints Handled By	Recommendations

If you're uncomfortable with the idea of conducting an interview, the following pointers should help.

- Prepare beforehand. Have all the questions you want to ask written down in a logical order.
- When you arrange the interview, try to find a time when the owner or employee isn't usually very busy. You'll be able to get much better information if he or she isn't rushing to get back to work.
- If you're conducting the interview in person, be sure to dress appropriately. A well-groomed, professional appearance will make people take you more seriously and be more willing to give you their time.
- Keep your questions on a professional level. If you see that something's making your interviewee uncomfortable, move on to something else.
- Listen carefully and take notes.
- Keep the interview short. Tell your interviewee how long the talk will last and be sure you keep to that time frame.
- Thank your interviewee when the discussion is over.



3. Look in your local Yellow Pages™ under the heading “Credit Reporting Agencies” and contact one agency. Make inquiries as to services it provides, fees it charges, and so on.
4. Calgary Legal Guidance offers a service to Albertans called Dial-A-Law. Simply by punching in a number on a touch telephone and following recorded instructions, you can get access to all sorts of practical legal information. To contact Dial-A-Law, do the following:



- If you live in Calgary, dial 234-9022. If you live elsewhere in the province, dial, toll free, 1-800-332-1091.
- Follow the instructions you're given over the phone to get access to the information you want.

Here are a few consumer-law topics in the Dial-A-Law you might wish to listen to, along with their corresponding numbers:

- | | |
|----------------------------------|------------------------------|
| • 512 <i>Buying on Time</i> | • 405 <i>Returning Goods</i> |
| • 514 <i>Collection Agencies</i> | • 516 <i>Bankruptcy</i> |
| • 515 <i>Sales Contracts</i> | • 526 <i>Credit Cards</i> |

There are many other topics covered in the Dial-A-Law series that might interest you. Remember, however, that this service, while offered free of charge, costs money to maintain; use it only if you're serious about obtaining legal information on specific topics.



5. If you can get hold of a copy, watch the fifteen-minute videotape *Contract and Consumer Law*, from the ACCESS series *You and the Law*. This short video will give you a good deal of useful information on Alberta laws relating to contracts and consumer concerns.
6. Another very good videotape treatment of contract law is the TVONTARIO series *Business Concepts—Contract Law*, also available from ACCESS. Six videos from this series you might consider watching are
 - *Contracts: What Are They?*
 - *Contracts: Basic Agreement*
 - *Contracts: Consideration*
 - *Contracts: Legal Capacity*
 - *Contracts: Genuine Consent*
 - *Contracts: Legality*

Don't let that list overwhelm you. These videos are under five minutes each, and they present the material in an entertaining cartoon format.

CONCLUSION

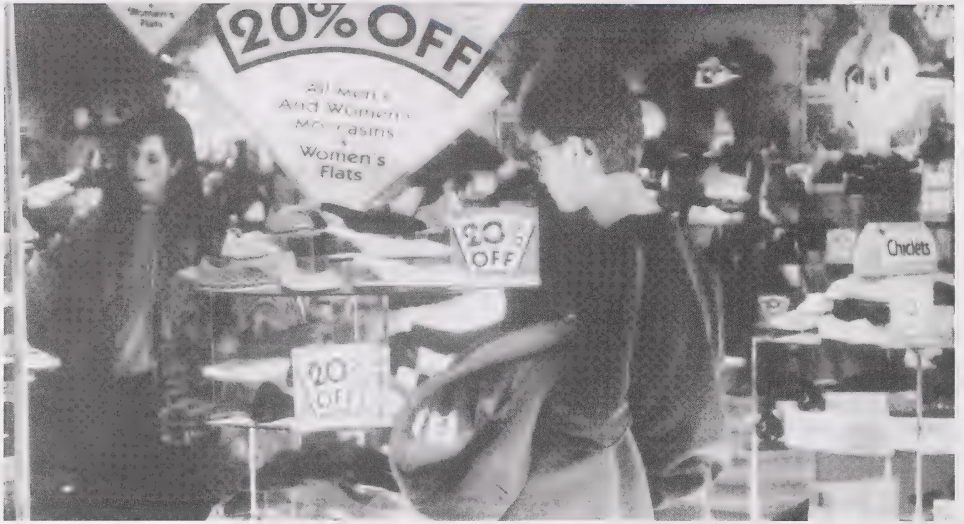


PHOTO SEARCH LTD.

In this section you've examined laws that affect and protect consumers. You've looked into the legalities behind deposits and returns, you've learned about the essential forms and elements of legally binding contracts, and you've examined the rights of minors when making purchases. You've also looked at the protection offered consumers by warranties and guarantees, and you've studied some of the legalities involved in getting credit, defaulting on payments, and declaring bankruptcy.

You began this section with a look at three scenarios involving consumer-related legal issues. Now that you've completed the section, would you feel more confident in giving advice to people finding themselves in situations like these?

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 1.



Renting Accommodation



BRENT and Yuri, two college students, are looking through the classified ads for rental accommodations. Listen in on their conversation:

“Here’s a good one.”

“Not bad. What’s the rent? How big a damage deposit are they asking?”

“It doesn’t say. I’ll phone and ask. Besides, I’d like to find out what the landlord’s like and what the deal is on the lease.”

Does this sort of conversation sound familiar? If not, it probably will in a year or two. In this section you’ll look at a few of the laws on common issues that arise between landlords and tenants. When you’ve finished the section, you should be able to identify some of the legalities in basic landlord/tenant law, explain advantages and disadvantages of signing a lease, and describe the legal implications of two people living together for economic reasons.

SECTION 2

Landlord and Tenant

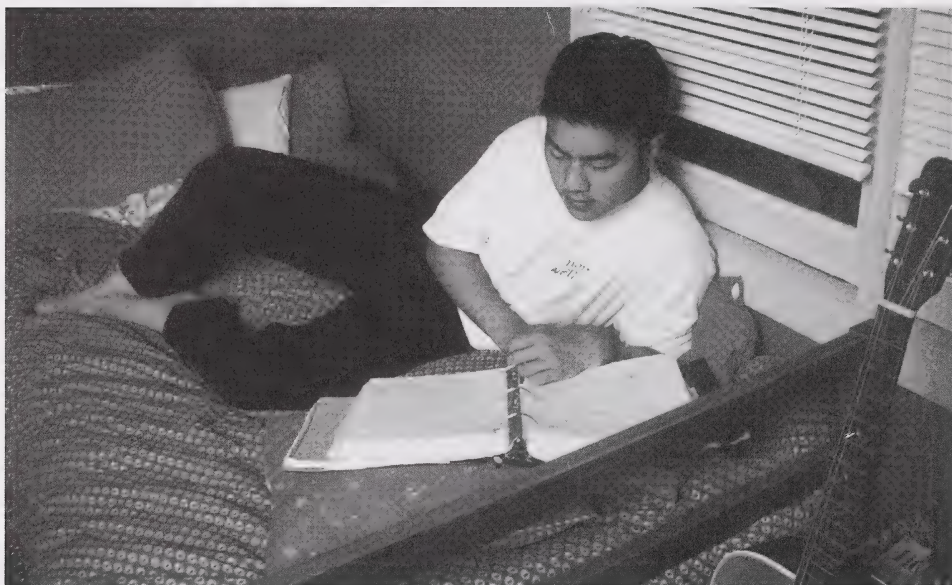


PHOTO SEARCH LTD.

If you're a typical high school student, you most likely live at home with one or both parents. If so, do your parents own the home you live in? There's a good chance that they do, but there's also a very good chance that they don't. The fact is that in Alberta many people don't own the buildings they live in; such people are known as **tenants**. Tenants are simply people who rent their house, apartment, duplex—whatever sort of home they live in. Tenants normally pay rent to a **landlord**. The landlord may be the person who owns the building, a property manager hired by the owner, or even someone else renting the building and renting it out once again to the person actually living in it.

tenant: a person who rents, rather than owns, the home in which he or she lives

landlord: a person who rents out a home to a tenant

Rights and Responsibilities

In Alberta a statute called the *Residential Tenancies Act* outlines the obligations of landlords and tenants. What follows will give you an idea of how some of these obligations work. It will look at landlord/tenant relations under three headings:

- When the Tenant Moves In
- While the Tenant Lives in the Rented Property
- When the Tenant Moves Out

When the Tenant Moves In

The chart that follows briefly outlines the three things that should happen at this stage. Study the chart carefully and then answer the questions that follow it.

What Should Happen	Explanation
The landlord and tenant arrive at a tenancy agreement.	Before moving in, the landlord and tenant should come to an agreement on what type of tenancy (periodic; fixed term) this will be, how much rent is involved and when it's to be paid, and who will pay for repairs, utilities, and other services.
The tenant leaves a security deposit with the landlord.	<p>A security deposit provides the landlord with some financial security if a tenant misses rent payments, damages the premises, or fails to clean up properly after moving out.</p> <p>The maximum amount a landlord may request is the equivalent of one month's rent.</p>
The tenant and landlord complete an inspection report.	An inspection report describes the condition of the premises when the tenant moves in and moves out. This report protects both the landlord and tenant in that neither party can be held responsible for damages with which that party hasn't been involved.

▼
periodic tenancy: a rental agreement running on a week-to-week or month-to-month basis

fixed-term tenancy: a rental agreement that begins and ends on specific dates

security deposit: an amount of money left by a tenant with a landlord at the beginning of a tenancy to cover any amounts owing when the tenancy ends (commonly called a damage deposit)

▲

The three steps outlined in the preceding chart are all very important when you're renting a place to live. The one that's most often neglected is the inspection report, but it can end up being very important if a landlord tries to make you pay for damage that already existed when you moved in. Conversely, a report can help a landlord when a tenant who actually has caused damage tries to claim it was done by an earlier tenant.

Note the two types of tenancies mentioned in the chart. Periodic tenancies run from week to week or month to month while fixed-term tenancies begin and end on agreed-upon dates.

1. Here are two landlord/tenant situations. Read each one and answer the questions that come after it.
 - a. Eva wants to rent an apartment until she finds a job in another country. What type of tenancy agreement should she enter into? Explain your answer.
 - b. Georges has agreed to rent a house for \$650 a month. Because Georges strikes the landlord as possibly a bad-risk tenant, she asks that he put down a security deposit of \$750. Is she within her rights? Explain why or why not.

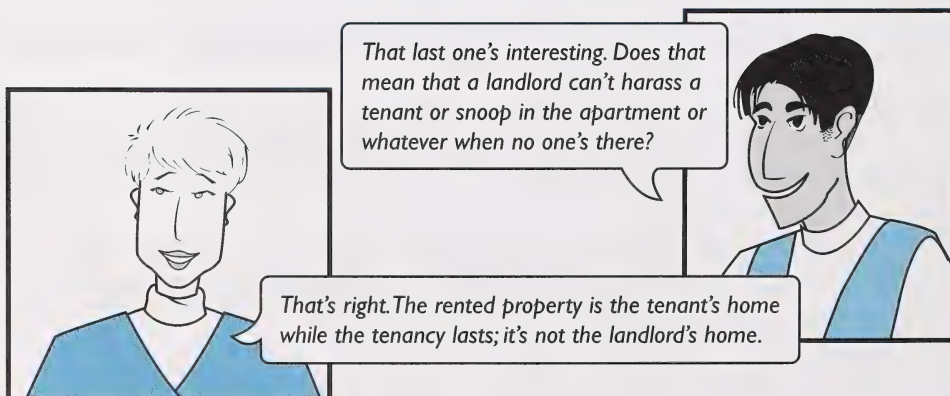
2. Katie is renting her very first apartment. When she asks her new landlord about an inspection report, he laughs and says that's just a waste of time; he'll trust her. Katie, feeling a little intimidated by the whole situation, doesn't press the issue. What is your advice to her? Explain your reasons.

Compare your answers with those in the Appendix, Section 2: Activity 1.

While the Tenant Lives in the Rented Property

While moving into a rented accommodation is something that has to be done carefully, most of a tenant's experience with renting a home involves actually living in it, paying the rent, dealing with the landlord, and being responsible for the rented property. The chart that follows lists the principal duties of both the landlord and tenant during this period.

Party	Responsibilities
Tenant	<p>The tenant should</p> <ul style="list-style-type: none">• pay the rent on time• be considerate of other tenants• not endanger other tenants• not perform illegal acts or conduct illegal business on the premises• keep the premises reasonably clean and safe• prevent damage to the premises• move out when the rental agreement ends
Landlord	<p>The landlord should</p> <ul style="list-style-type: none">• ensure that the premises are available for the tenant when the rental agreement takes effect• ensure the premises are habitable at the beginning of the tenancy• give proper notice if he or she wants to enter the apartment for repairs• not disturb the tenants' peaceful enjoyment of the premises



Of course problems can and do arise between tenants and landlords during the period of tenancy. Frequently one party or the other fails to live up to his or her responsibilities and the results can sometimes be nasty. When issues like this do occur, the best thing to do is talk them over. If this doesn't work, and the problem is serious, then the party that feels wronged should consult a lawyer. As a last resort, either party can take the other party to court.



3. Before going on, think of as many sorts of disputes as you can that are likely to occur between a landlord and a tenant. If you're working with a study partner, brainstorm ideas together.

If a landlord/tenant dispute does end up in the courts, the **plaintiff** can ask for the problem to be redressed in several different ways. If the plaintiff is a tenant, here are some of the legal remedies available.

plaintiff: *the party bringing a legal action against another party in civil court*

damages: *money awarded to a plaintiff by a court to compensate for a wrong suffered*

abatement: *a reduction in rent*

- The plaintiff can seek **damages**. *Damages* is the legal term for money to compensate for a wrong that a person has suffered at another's hand.
- The plaintiff can seek **abatement** of rent. This can mean a reduction in rent based on the amount lost because of the landlord's failure to live up to his or her responsibilities.
- The plaintiff can seek compensation to pay for doing things the landlord was supposed to do.
- The plaintiff can seek termination—an ending of the tenancy.

4. Read the following scenarios and answer the questions asked.

- a. Mr. Cardinal signs an agreement to move into a house on April 1 that Mr. Bigg is presently renting. To Mr. Cardinal's surprise, Mr. Bigg is still occupying the house when he (Mr. Cardinal) tries to move in on the stipulated date. Mr. Cardinal tries talking to the landlord, but she refuses to do anything. What should Mr. Cardinal do now?



- b. Gerald wants to have cable installed in his apartment but his landlord won't let the company hook it up. What are Gerald's rights?

Compare your answers with those in the Appendix, Section 2: Activity 1.



I have a question about renting a home. Can a landlord refuse a person because of his or her race or religion?

Absolutely not. An Alberta statute called the Individual's Rights Protection Act prohibits landlords from discriminating against tenants on the basis of "their race, religious beliefs, colour, sex, physical characteristics, ancestry, or place of origin."



When the Tenant Moves Out

All tenancies eventually come to an end. When they do, once again there are things that both landlord and tenant should do. The chart below explains the principal ones.

What Should Happen	Explanation
Proper notice must be given by the party terminating the tenancy.	The landlord or tenant (whoever is doing the terminating) must put the notice to terminate in writing. In addition, it must be delivered in person or by registered or certified mail to the address of the landlord or tenant. For month-to-month tenancies the landlord must give the tenant three months' notice, while the tenant must give the landlord one month's notice. In a week-to-week tenancy the tenant or landlord must give each other one week's notice.
A final inspection should be carried out and a report made.	A landlord and tenant must complete a final inspection of the premises within one week after the tenant moves out.
The security deposit should be returned to the tenant minus any legitimate withholdings.	<p>Tenants have a right to get their security deposits back within ten days after they move out. They should get the full amount of the deposit, plus any interest owing, if the following conditions are met:</p> <ul style="list-style-type: none"> • no damage has been done, beyond normal wear and tear • the premises have been properly cleaned • no rent is owing <p>Otherwise, the landlord has the right to keep part or all of the security deposit to cover the costs.</p> <p>If the damage exceeds the security deposit, the landlord can take legal action to claim for money needed for repairs.</p>

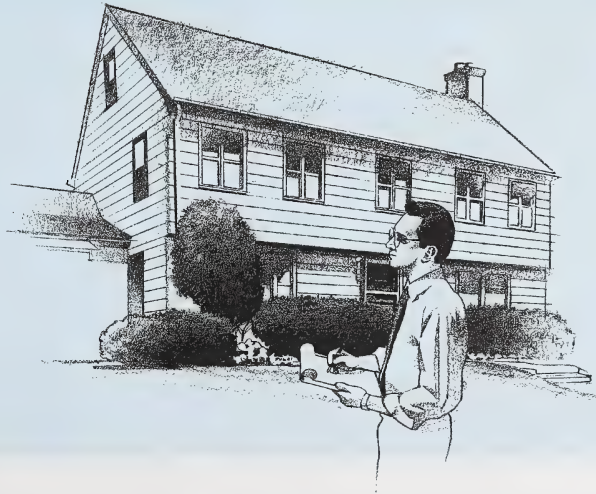
5. Read the following scenarios and answer the questions.

- a. Mrs. Sandhu is demolishing her apartment complex to make room for a mall. How much notice must she give her tenants?
- b. Roberto moved out of his apartment two months ago and is still waiting for the return of his security deposit. Is this legal? Explain why or why not.
- c. Mr. and Mrs. Rentz and their seven children rented a house from Mr. Smith for three years. When they left, they made sure they moved out several days before the tenancy expired so they could return to the empty house and clean it properly before Mr. Smith took possession. However, the day after they moved out they received a phone call from an angry Mr. Smith who'd let himself into the house. He claimed the kitchen was filthy, the carpets worn, the porch steps wobbly, and all the walls in need of repainting. For these reasons, Mr. Smith claimed, he was keeping the entire security deposit.

Was Mr. Smith within his rights? Explain why or why not.

Compare your answers with those in the Appendix, Section 2: Activity 1.

You've now looked briefly at the processes that should be carried out when a tenant moves in, lives on the premises, and moves out. What follows is an example of an inspection report. Note how it has both *in* and *out* columns. If things are done correctly, a landlord and tenant can use a report like this to minimize the chances of disputes arising during any of these three processes.



Name of Landlord/Landlord's Agent _____ (Address) _____ _____ (Postal Code)		Name of Tenant(s) 1. _____ 2. _____ 3. _____ Address of Rental Unit _____	
Phone Number Bus: _____ Res: _____			
Security Deposit Collected \$ _____		Date Occupied _____ Vacated _____	
Key(s) Issued: For Rental Unit _____ For Mailbox _____		Key(s) Issued: For Rental Unit _____ For Mailbox _____	

COMPLETE THIS FORM IN DUPLICATE. IT IS IN THE INTERESTS OF BOTH THE LANDLORD AND THE TENANT TO ASSURE THAT THIS IS DONE CORRECTLY. THIS FORM IS TO PROVIDE AN ACCURATE RECORD OF CONDITION OF RENTED PROPERTY FROM THE DATE TENANCY BEGINS UNTIL TERMINATION. THE TENANT OR LANDLORD IS GIVEN THREE DAYS FROM THE DATE OF OCCUPANCY TO COMPLETE THIS FORM WHICH SHOULD BE SIGNED BY BOTH THE TENANT AND THE LANDLORD/LANDLORD'S AGENT. EACH PARTY SHOULD RETAIN ONE COPY AS A PERMANENT RECORD.

Code No.'s	1. Clean/OK 2. Needs Cleaning	3. Needs Painting 4. Needs Steamcleaning	5. Damaged (Describe) 6. Missing (Describe)	7. Dirty (no effort made) 8. Needs Repair
	Code No.	IN (Describe Conditions)	Code No.	OUT (Describe Conditions)

Doors and Closets				
Walls and Trim				
Floorcoverings				

Stove/Hood				
Fridge				
Countertops and Sink				
Cupboards and Doors				
Walls and Trim				
Floorcovering				
Ceiling				
Windows and Screens				
Electrical Fixtures				

Drapes				
Walls and Trim				
Floorcovering				
Ceiling				
Windows and Screens				
Electrical Fixtures				

Walls and Trim						
Floorcoverings						
Toilet						
Bath tub/Shower						
Sink/Vanity/Mirrors						
Ceiling/Fan						
Electrical Fixtures						
Door						

Code No.'s	1. Clean/OK 2. Needs Cleaning	3. Needs Painting 4. Needs Steamcleaning	5. Damaged (Describe) 6. Missing (Describe)	7. Dirty (no effort made) 8. Needs Repair
	Code No.	IN (Describe Conditions)	Code No.	OUT (Describe Conditions)

Master Bedroom:

Walls and Trim				
Closets and Doors				
Floorcovering				
Ceiling				
Drapes				
Windows/Screens				
Electrical Fixtures				

Bedroom 2:

Walls and Trim				
Closets and Doors				
Floorcovering				
Ceiling				
Drapes				
Windows/Screens				
Electrical Fixtures				

Bedroom 3:

Walls and Trim				
Closets and Doors				
Floorcovering				
Ceiling				
Drapes				
Windows/Screens				
Electrical Fixtures				

Basement:

Walls/Floor				
Furnace/Filter				
Windows/Screens				
Electrical Fixtures				

General:

Balcony				
Patio Door/Screen				
Garage/Parking				
Doors/Screens				
Stair/Stairwell				
Yard Space				
Smoke Detector(s)				

Other:

IN
OUT

Landlord's Signature _____	Landlord's Signature _____
Date (in) _____	Date (out) _____
Tenant's Signature _____	Tenant's Signature _____

Tenants	1. _____	Postal Code _____
Forwarding	2. _____	Postal Code _____
Address	3. _____	Postal Code _____

Three Common Situations

You've now had an overview of some of the basic provisions of the *Residential Tenancies Act*. What follows is a somewhat more detailed look at three situations that commonly arise between a landlord and a tenant. All three involve landlords' rights in dealing with tenants and the properties they rent.

Shown below are three common notices a renter might receive from his or her landlord. The notices are followed by explanations.

Notice #1

**Termination of
Tenancy**

Notice #2

**Entry by Landlord
to Inspect or
Show the Premises**

Notice #3

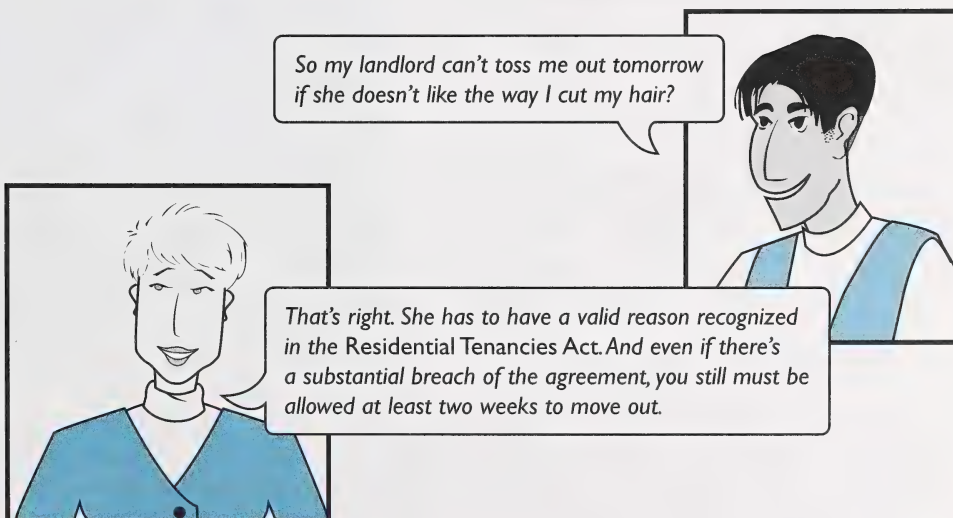
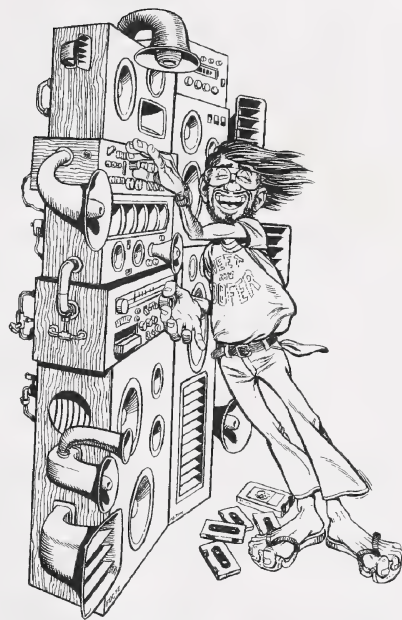
**Rental
Increase**

Notice #1

Sometimes a landlord decides that a tenant must be evicted from the rented premises. This doesn't mean, however, that landlords can terminate tenancies just on a whim. You've already seen that termination notices have to be given in writing and must allow the tenants a stipulated time in which to leave. The landlord also has to have a good reason for the eviction; for instance, he or she may have sold the property to someone who intends to live in it.

Sometimes the period between notice and eviction can be shortened. For instance, if a tenant has committed a "substantial breach" of his or her obligations as a tenant, fourteen days is all that's required. A substantial breach might be a failure to do such things as

- keep the premises clean
- pay the rent
- be considerate of other tenants (such as having loud parties at night)
- not conducting illegal businesses or causing danger to others
- looking after the rented accommodation in a reasonable fashion



Finally, even the fourteen-day period can be shortened if the situation is extreme. If, for example, a tenant causes extensive damage or actually assaults other tenants or the landlord, he or she can be evicted on a forty-eight-hour notice. In this case the landlord must apply to the court in order to evict.

6. Sly Cool has been warned on numerous occasions that he's playing his saxophone too loud, disturbing other residents in the apartment complex.
- What can the landlord do to evict him?
 - What are Sly's rights here?

Compare your answers with those in the Appendix, Section 2: Activity 1.

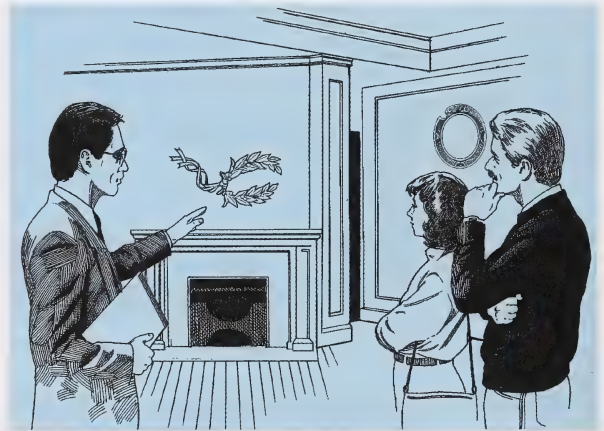
Notice #2

As you noted earlier, once a tenant rents a property it becomes his or her home, and during the tenancy the landlord has very limited rights to enter it. In fact, a landlord can enter the premises under only three conditions:

- if the landlord has good reason to believe there's an emergency
- if the landlord has good reason to believe that the tenant has abandoned the premises
- only after giving notice twenty-four hours in advance in order to
 - do repairs
 - inspect for damage
 - show the premises to prospective buyers or renters

In the last case the notice must

- be in writing
- be signed
- state the reason for the entry
- state the time and date of the entry



7. Mrs. Cardoza rents out a basement suite in her home. Being opposed to any form of alcohol consumption, Mrs. Cardoza becomes alarmed one day when she thinks she detects fumes coming from her tenant's suite. When her tenant is at work the next day, she lets herself into the suite and goes through the drawers and cupboards looking for bottles. When the tenant comes home, he realizes that his landlord has been going through his belongings. Have the tenant's legal rights been infringed upon? Explain.

Compare your answer with the one in the Appendix, Section 2: Activity 1.

Notice #3

Do you remember what a *periodic tenancy* is? It's a tenancy that runs from week to week or month to month (or even year to year). Landlords can raise the rents they charge during periodic tenancies, and there are really no legal controls over how much they can be raised. The *Residential Tenancies Act* does, however, limit the number of rent raises to two a year. In addition, the act stipulates that the landlord must give the tenant written notice of the increase.

The amount of time that must elapse between the notice being given and the increase taking effect is also laid out, though it varies depending on the type of tenancy. Here are the stipulated time frames:

- for a weekly tenancy, at least twelve weeks' notice
 - for a monthly tenancy at least three months' notice
 - for any other type of periodic tenancy, at least ninety days' notice
8. Ritchie's landlord slipped a note into his mailbox stating that his rent would go up by \$50 a month beginning with his next payment, due in three weeks. Ritchie is renting on a month-to-month basis. Must he pay this increase? Explain your answer.

Compare your answer with the one in the Appendix, Section 2:Activity 1.

In this activity you've been given a practical introduction to landlord/tenant law in Alberta. This introduction will be extended in Activity 2, which will provide you with an overview of the law governing leases.

ACTIVITY 2

Signing a Lease

▼
lease: a contract between a landlord and tenant for the rental of the property

lessor: the landlord in a leasing arrangement

lessee: the tenant in a leasing arrangement
▲



Have you ever heard people talk about leasing a car or leasing an apartment? These days there's a lot of talk about leasing automobiles, but the most common sort of leasing arrangements still involves rental accommodations.

Put simply, a **lease** is any tenancy agreement between a renter and a landlord. When a lease is created, the landlord is called the owner or **lessor** and the tenant is the occupier or **lessee**. Although some leases are verbal, most are written, often in a very formal, legalistic style.

Every lease should specify the following information:

- the period during which the premises are to be rented
- a statement to the effect that the lessee is granted exclusive possession during this period
- the address of the property
- the amount of rent to be paid during the tenancy

The document that follows is an example of a formal, written lease. Test your ability to decipher legalese by answering the questions that follow it.

This Indenture

made in duplicate the *fifteenth* day of *April* A.D. 1997

BETWEEN *Anwar Hussein* hereinafter called the lessor, of the first part

AND *Doreen McGee* hereinafter called the lessee, of the second part.

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the lessee to be paid, observed and performed, the lessor hereby demises and leases unto the lessee, all that certain parcel or tract of land and premises situate, lying and being located at *10515, 51 Street* in the *town of Carlton* in the Province of *Alberta* and being composed of *a three-bedroom bungalow, single car-garage and two lots* together with all the rights, privileges and appurtenances whatsoever thereto belonging or appertaining,

TO HAVE AND TO HOLD the said demised premises and the appurtenances for and during the term of *one year* to be computed from the

First day of *May* A.D. 1997

YIELDING AND PAYING therefore monthly and every month, in advance, during the said term the sum of *seven hundred* dollars, the first of such payments on the *first* day of *May* A.D. 1997

THE LESSEE COVENANTS with the lessor that the lessee shall and will pay the said rental to the lessor on the days and times and in the manner hereinbefore provided; and shall and will promptly pay all water and light rates assessed or chargeable against the said demised premises during the said term; and shall and will not assign the said term or any part thereof nor sublet the said demised premises or any part thereof without the

leave of the lessor first had and obtained; and shall and will permit the lessor at all reasonable times to enter the said demised premises to view the state of the repair thereof; and shall and will at all times during the said term keep and at its expiration leave the said demised premises in good repair reasonable wear and tear and damage by fire, lightning and tempest only excepted; and that if default be made in payment of any of the said rent or in the observance and performance of any of the covenants and agreements herein contained on the part of the lessee, the lessor may re-enter the said demised premises and repossess and enjoy the same as of the lessor's former estate; and

THE LESSOR COVENANTS with the lessee that the lessee paying the said rent and observing and performing the said covenants and agreements shall and may peaceably possess and enjoy the said demised premises without molestation or hindrance, and that the lessor shall and will promptly pay all taxes (other than water and light rates as aforesaid) assessed or chargeable against the said demised premises during the said term;

AND IT IS AGREED between the lessor and the lessee that should the said term be seized or taken under execution or in attachment by any creditor of the lessee, or should the lessee make any assignment for the general benefit of his creditors or becoming bankrupt or insolvent shall take the benefit of any Act that may then be in force for bankrupt or insolvent debtors, the rent for one month succeeding the then current month shall immediately become due and payable and the said term shall, at the option of the lessor, immediately become forfeited and determined; and that these Presents and everything herein contained shall respectively enure to the benefit of and be binding upon the lessor and the lessee and their heirs, executors, administrators and assigns, and every of them, respectively; and that the terms "the lessor" and "the lessee" as used herein shall include the plural thereof; and that the said demised premises are demised and leased hereunder to be used as *a family dwelling* and for no other purpose.

IN WITNESS WHEREOF the lessor and the lessee have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

L. Smith

O. Brown

Amos Hudson

Amos McKee

1. a. In this lease, who is the lessee?
- b. Who is the lessor?
- c. Create a chart like the one that follows and in it list the principal obligations of the lessee and the lessor.

PRINCIPAL OBLIGATIONS	
Lessee	Lessor

Compare your answers with those in the Appendix, Section 2:Activity 2.

Advantages and Disadvantages of Leases



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Signing a lease has advantages and disadvantages for both lessee and lessor; indeed, one of the first things prospective renters usually want to know is whether or not they'll have to (or be able to) sign a lease. Having one puts you in a very different situation from being in a periodic tenancy.

2. Suggest the principal advantages and disadvantages for both lessee and lessor of having a lease.

Compare your ideas with those in the Appendix, Section 2:Activity 2.

If you're a typical high school student, you're far more likely to find yourself a lessee in the foreseeable future than a lessor. For this reason, the emphasis here will be on the advantages and disadvantages a lessee experiences in signing a lease. The chart that follows outlines some of these important advantages and disadvantages.

HOW A LEASE AFFECTS A LESSEE	
Advantages	Disadvantages
<ul style="list-style-type: none"> • A lease creates security of tenancy for a stipulated period. • A lease normally creates a fixed rent for the duration of the tenancy. • A lease can provide agreed-upon solutions to problems likely to arise. • A lease can allow a landlord to provide incentives to a tenant; for example, free cable service or one month's free rent. 	<ul style="list-style-type: none"> • A lease is a binding contract that can lock a tenant into a tenancy even if he or she wishes to move. • If a tenant breaks a lease, a breach of contract occurs, and the landlord can sue for rent payments owing and/or the costs involved in finding a new tenant. • A lease may contain an <i>acceleration clause</i> that can require a tenant who misses rent payments to pay rent in advance. • A lease may contain an <i>escalation clause</i> that gives the landlord the right to raise the rent to cover increased costs.

- Alonzo has come to you, a Legal Studies student, for advice on the lease he's about to sign. He understands that there's an *escalation clause*. What does this mean?
- Nina is thinking of moving into an apartment and has been told there's a one-year lease involved. Nina has applied to a college in a different city; if she's accepted, she'll have to move there in the fall. What advice would you give her?

Compare your answers with those in the Appendix, Section 2: Activity 2.

Assigning and Subletting

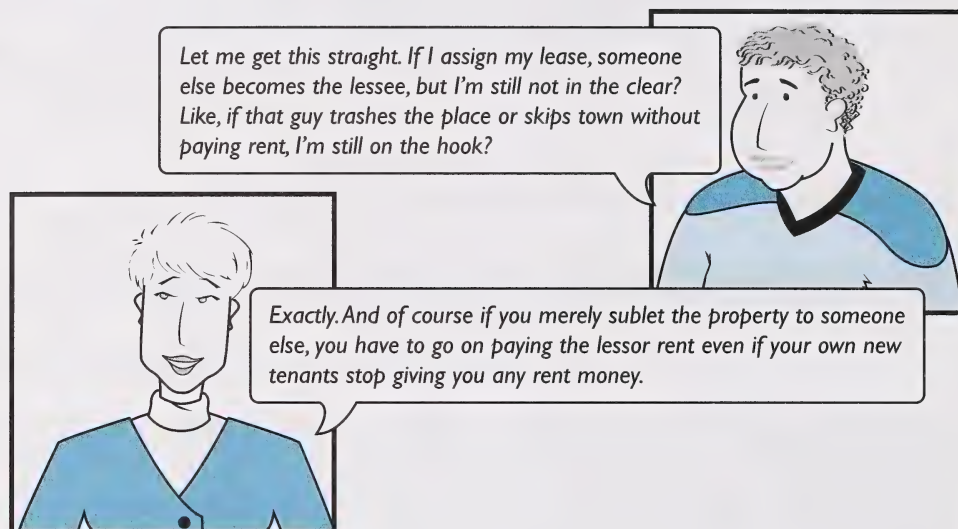
assign a lease: turn a lease over to another person who will become the new tenant and pay rent to the landlord

sublet: as a tenant, rent a property (or part of it) to a third party who will pay rent to you



You've been told that if you sign a lease you're locking yourself into a contract. In reality, landlords will often let tenants break a lease if they give enough notice to allow the landlord to find new tenants. Other ways of getting around a lease you no longer want are to **assign the lease** or to **sublet** the property.

If a tenant assigns a lease to another party, that party becomes the lessee and must pay the rent to the landlord and be responsible for all the other obligations of a lessee. By contrast, if a tenant sublets the property—or part of it—to a third party, that original tenant remains the lessee, but now he or she is the landlord to the third party. In either case, though, it's important to be aware that ultimately the original lessee is responsible for the lease. So if the third party fails to pay the rent or damages the premises, the original tenant is liable to pay what's owing.



You can't assign a lease or sublet a property without the permission of the lessor, but he or she can't normally refuse permission unless there's a good reason to. Subletting is more common than assigning; one reason is that you can sublet for just a short while—when you're on vacation for two months, for example—and resume occupancy yourself when you get home.

5. Germaine has decided to leave the country for the next year. Unfortunately, she'll be forced to break her lease. Explain her legal obligations and the options open to her.
6. Jordan sublet his apartment to his friend Yvette for three months. The agreement was that Yvette would pay rent to the lessor as Jordan had been doing. When Jordan returned, he discovered that Yvette hadn't kept up her payments and the lessor was bringing a legal action against Jordan for money owing. Jordan sought legal aid, hoping to divert the whole action against Yvette; after all, she was the one who'd failed to make the payments.
 - a. Will Jordan be successful? Why or why not?
 - b. What would you advise Jordan to do to rectify the situation?

Compare your answers with those in the Appendix, Section 2: Activity 2.

In this activity you've learned the basics about leases; you should now have a good idea about how they work, what their pros and cons are, and what to look out for in signing one. The next activity will take a look at another area in landlord/tenant law—the legal implications of sharing accommodations with a friend.

ACTIVITY 3

Sharing Accommodation



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If you're likely to be leaving home in a year or two to study or begin a job, one possibility you might find yourself considering is sharing an apartment with a friend or perhaps even renting an entire house with a group of friends. People just starting out often have little money to spend on rent, and this is one way to cut costs. In fact, some people continue to share accommodation for many years as a way of combining companionship and budgeting.

1. If you do consider living with a friend, you have to be careful about who you pick. Suggest a few things you should consider in selecting a roommate.

Compare your ideas with those in the Appendix, Section 2: Activity 3.

▼
joint tenancy: a tenancy that includes more than one lessee
▲

When sharing accommodation with friends, there are two ways to go about it. One way is for each person to join in the rental relationship with the landlord. If there's a lease involved, a **joint tenancy** is created. In this situation all the tenants are responsible together for paying rent and keeping up the property. If one of them defaults, the others must come up with the amount he or she was to pay.

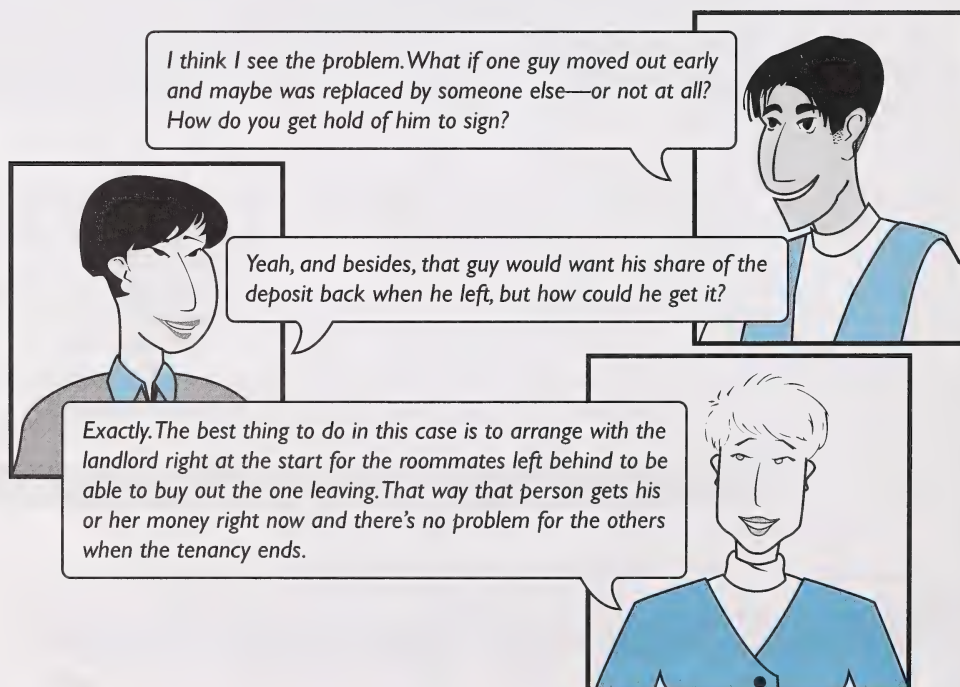
The other way is for only one person to enter the relationship. This person becomes the official tenant, and he or she alone shoulders the usual responsibilities of a tenant. This person must, in turn, collect rent money from those sharing the accommodation.

2. You and three friends intend to rent a house, and you've decided amongst yourselves that you alone will sign the lease. The plan is that each month you'll pay the rent and then collect each friend's share; however, you're concerned that some of your friends might not be entirely reliable. Suggest a step you could take to protect yourself.
3. Gerry and a friend signed a lease as joint tenants. Gerry's friend was laid off and had to move back in with his parents. The landlord is asking for the rent owing—\$600. How much will Gerry have to pay?



Compare your answers with those in the Appendix, Section 2: Activity 3.

Security deposits can sometimes cause problems when people share accommodation. For instance, if there's a joint tenancy, the deposit is given by all the tenants. That means when the time comes to get the deposit back at the end of the tenancy, the cheque will have to be made out to the names of all those who paid; and they'll all have to sign in order to cash it.



Probably the roommates who get off most lightly in a shared-accommodation situation are those who manage to convince someone else to be the tenant and to simply trust them for their share of the rent. But, of course, people who do that will lack the security they'd get by becoming tenants themselves. Ultimately the choice of how you set up a shared living arrangement will be up to you; it is important, however, that you understand exactly what responsibilities you'll be taking on.

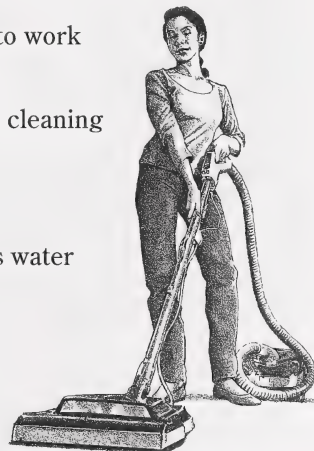
4. Laura and Signe have rented an apartment together, but only Laura has signed the lease. After a month the two roommates find they can't stand living together and Signe moves out. Laura insists that Signe has an obligation to keep paying her half of the rent until the lease is up.
- What are the legal obligations of each girl?
 - What would you advise them to do?

Compare your answers with those in the Appendix, Section 2: Activity 3.

Of course there are many other points that roommates have to work out if sharing accommodation is to run smoothly. For example, ways have to be developed for dividing up expenses—groceries, for example. Some people eat more than others, and people have different tastes and schedules. And what if the roommates have cable TV but one or more of them watch far less television than others?

Here's a short list of things roommates generally have to work out:

- the division of household expenses like groceries, cleaning materials, and bathroom articles
- the cable bill
- the utilities bills—heating, electricity, and perhaps water
- the phone bill
- responsibility for cleaning and maintaining the home



The important thing is to discuss these things freely and work out in advance ways of dealing with them. If you do things like opening joint bank accounts for shared expenses, keeping careful track of all long-distance phone calls, or setting up a “kitty” into which each roommate contributes so much each week for household expenses, a great deal of anger, frustration, and hurt feeling can be avoided down the road.

In this section you've learned a few basics about sharing accommodation. If you ever do live in this sort of arrangement, be sure you understand your obligations clearly. Try, as well, to find mature, responsible roommates.

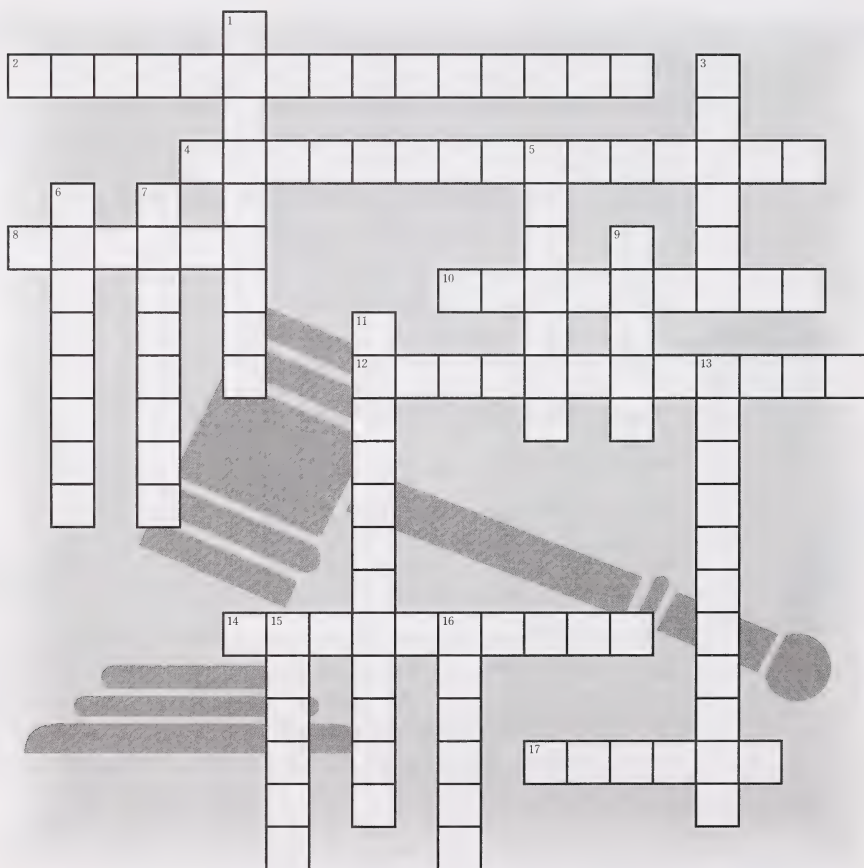
FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you do the Enrichment.



Extra Help

In this section you've examined a few basic concepts related to rental accommodations. You also should have gained an awareness of some of the issues involved in landlord/tenant law. In the activities you've encountered a number of legal terms. The crossword puzzle that follows should help you test your knowledge of these terms. Try to complete it without looking back. If you do have to refer to the instructional material, be sure to study the areas concerned carefully.



Across

2. This must take place within a week after a tenant moves out.
4. This provides a landlord with financial security if a tenant misses payments or damages the property.
8. This person doesn't own the home he or she lives in.
10. This means a reduction in rent.
12. A tenant can seek this in court to pay for something the landlord was supposed to do.
14. This clause allows a landlord to increase the rent to cover increased costs.
17. This is a landlord who enters a leasing agreement.

Down

1. This rental agreement begins and ends on fixed dates.
3. The occupier of a rental accommodation has signed a lease.
5. This term refers to money a court can award a defendant to make up for a wrong suffered.
6. This rental agreement recurs on a week-to-week or month-to-month basis.
7. This person owns or manages a rental property.
9. This is a contract between a landlord and tenant for the rental of a property.
11. This clause may oblige a tenant to pay rent in advance.
13. Either party to a rental agreement can seek this and so have the arrangement come to an end.
15. This is to rent out to a third party a property you're already leasing.
16. When applied to a lease, this means to transfer your rights and obligations to a third party.

**Compare your crossword with the one in the Appendix,
Section 2: Extra Help.**

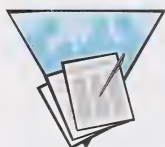


Do **one** or **more** of the following.

Task Management



Communication



Task Management



Task Management



1. Try to get hold of two or three different lease agreements. You might ask people who are currently leasing their homes, or you could approach a landlord of an apartment building in your community. For each one list and compare the advantages and disadvantages. You might want to do this initially in chart form. When you've gathered and analysed your information, write up your findings in a brief report.
2. Try to get hold of more examples of the documentation needed before moving into a rental accommodation. In chart form, list some of the key features you notice.

Document	Key Features
Tenancy Agreement	
Inspection Report	

3. There's a good deal of free information readily available to Albertans on the legalities involved in renting accommodation. Because this information is intended to help ordinary people with the ins and outs of situations they're likely to find themselves in, it's usually presented in a simple, easy-to-understand format. Here are a few sources of such information:

- The Dial-A-Law series produced by Calgary Legal Guidance provides a free telephone information service; see question 3 of the Section 1 Enrichment for details. Five topics you might consider accessing are
 - 710 *Eviction*
 - 711 *Moving into an Apartment*
 - 712 *Renters' Responsibilities*
 - 713 *Moving out of an Apartment*
 - 714 *Shared Accommodation*
 - 909 *Landlord Entrance Without Notice*
- The Learning Centre Literacy Association puts out a booklet titled *Laws for Tenants in Alberta*. To obtain information on ordering this booklet, contact the association in Edmonton at (403) 429-0675.

- Student Legal Services of Edmonton produces a series of brochures called *A Guide to the Law Regarding...*. Contact them at (403) 492-2226 and ask about the booklet in this series titled *Landlord and Tenant Law*.
- The Landlord and Tenant Advisory Services in Calgary offers information on Alberta landlord/tenant law. You can contact them at (403) 268-4656.
- Alberta Municipal Affairs—Housing and Consumer Affairs Division has a pamphlet entitled *The Residential Tenancies Act: Information for Landlords and Tenants*. You can contact them at (403) 427-5782

If you can, get hold of information offered by some or all of these organizations and see what you can learn about landlord/tenant law in Alberta.

Task Management



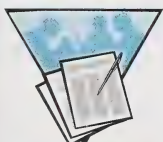
4. If you want to dig even deeper into Alberta's landlord/tenant law, get hold of a copy of the *Residential Tenancies Act*. This may be available at your library in a series of books called the *Statutes of Alberta* (see your librarian), or you can buy a copy at the following address:

The Queen's Printer Bookstore
1510 Kingsway Avenue
Edmonton, Alberta
T5G 2Y5
(403) 427-4952



If you obtain a copy of this statute, you'll find it's written in the formal legal style typical of legislation. If you take the time to read it carefully, however, you should be able to understand its main points. This statute is the principal legal reference for Alberta's laws governing landlord-and-tenant issues.

Communication



5. Talk with people you know who are renting a home or who have rented one in the past. Ask them about any experiences they've had dealing with landlord/tenant issues—security deposit problems, evictions, illegally raised rents, and so on. Find out how they resolved these problems. Discover whether they found that the law worked for them. Write up your findings in a brief report.
6. If you can get hold of a copy, watch the fifteen-minute videotape *Landlord and Tenant Law*. Part of the ACCESS series *You and the Law*, this video will provide you with more useful information on landlord/tenant law in an easy-to-understand style. Note that it discusses *Alberta's Landlord and Tenant Act*, rather than the *Residential Tenancies Act* which replaced it after the videotape was made. Most of the material in the video is, however, still accurate.

CONCLUSION



In this section you've examined some of the basic issues in landlord/tenant law. Issues of the sorts you've been looking at may well occur in your life in the not-so-distant future, so you could someday find what you've discovered here very useful. You've learned about what's involved in moving into, living in, and moving out of a rented accommodation. You've also discovered some of the advantages and disadvantages of signing a lease and sharing accommodation with others.

This section began with a brief look at Brent and Yuri, two college students looking for a place to live. You should now be in a good position to advise people like these two students on their legal rights and responsibilities as renters.

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 2.



Living with a Partner



DENIS and Marie have been living together for the last three years. In recent months Denis, who longs for stability in his life, has been pressuring Marie to get married; but Marie, who's a rather freer spirit than her partner, keeps shrugging her shoulders and replying "Why get married when things are going great the way they are? Who needs the hassle?"

Whose side do you sympathize with more? Do you think there's a need for couples like Denis and Marie to marry, or is cohabiting (living together) all that's necessary? Just how do the advantages of cohabitation and marriage stack up in your opinion?

In this section you'll be looking into the legal aspects of issues such as these. When you're finished, you should be able to explain the requirements of a legal marriage and describe the different rights and responsibilities of two people who are married as opposed to those of two people who are simply living together.

SECTION 3

ACTIVITY I

The Requirements of a Legal Marriage



marriage: the legal union of a man and a woman to the exclusion of all others for life



common-law union: the relationship of a man and a woman who live together as husband and wife but who haven't gone through a legal marriage ceremony (sometimes called a common-law marriage)



The situation involving Denis and Marie described in the section introduction isn't at all uncommon. If the couple eventually do decide to get married, they'll have made a legal commitment as well as a personal one. **Marriage** is the voluntary union for life of one man and one woman to the exclusion of all others. It's a contract between the husband and wife that will be enforced by the courts.

The marital relationship, along with the family that usually results, is one of the oldest institutions in society. In its essence marriage isn't a legal entity at all, but rather an institution that developed to give social, moral, and religious backing to a long-term relationship between a man and a woman. It's this institution that brings responsibility and security to what's essentially a sexual relationship. More, it helps ensure that children resulting from the relationship will be looked after and provided for.

Originally marriages were much like what we call **common-law unions** today. Men and women who wished to, simply lived together and raised a family. However, as society became more complex, it became necessary to assign legal rights and duties to the parties in a marriage; and gradually marriage became a legal institution. It became necessary to ascertain property rights for example; and for purposes of inheritance, the matter of legitimacy of children had to be settled. If marriages broke up, there had to be ways of determining what belonged to each partner. Gradually, then, the law came to control what had begun as an institution based on sexual relations, love, and trust.



Just what constitutes a valid marriage in Canada today is governed by laws passed by both provincial and federal (Canadian) governments. According to the *Constitution Act, 1867*, the federal government has jurisdiction over marriage and divorce while the provinces have jurisdiction over the solemnization of marriage. Working together, these laws set out a number of elements that every marriage must have if it's to be legal. The principal elements are listed below.

Element #1: Solemnization

In Alberta, a provincial statute called the *Marriage Act* requires that any couple planning to marry must obtain a marriage licence. (Some provinces allow a couple to have the banns of marriage announced in their regular place of worship as a substitute for getting a licence. This process involves the minister instructing the congregation that if they know any just reason why the couple shouldn't marry they are to make it known.) As well, the couple has to go through a ceremony conducted by someone with legal authority to marry people and witnessed by at least two people.

1. In Alberta two types of people are legally empowered to carry out marriage ceremonies. Can you identify them?

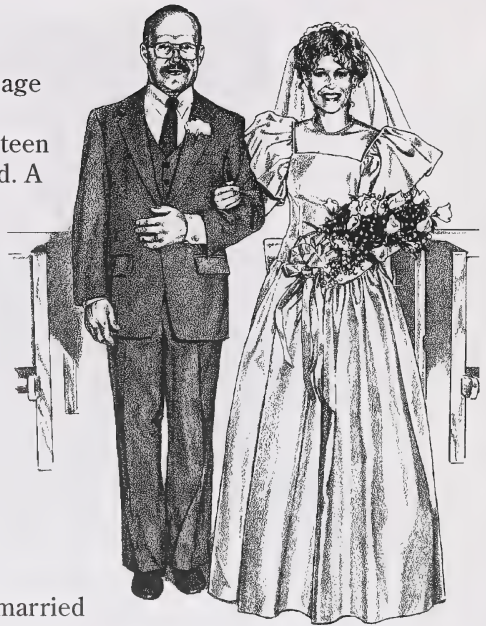
Compare your answer with the one in the Appendix, Section 3:Activity 1.

Element #2: Sexual Capacity

By marrying you agree to a voluntary sexual union with your spouse for the rest of your life. Part of this agreement is that the relationship will be monogamous; that is, neither party will have other sexual partners. If either party lacks sexual capacity (in other words, if either partner is impotent) at the time of the marriage, the marriage may be dissolved.

Element #3: Minimum Age

In Alberta you must be eighteen years of age or older to marry without your parents' consent. If you're between the ages of sixteen and eighteen, parental consent is required. A female under the age of sixteen may get married if she's pregnant or the mother of a living child, but she still needs parental consent.



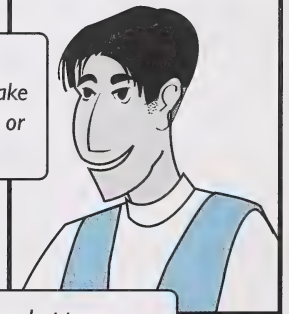
Element #4: Genuine Consent

A marriage has to be voluntary. If either party is forced or tricked into getting married, the marriage may be declared void. Lack of consent may be caused by either of the following situations

- mistake (One of the people getting married mistook the identity of the other or misunderstood the nature of the ceremony.)
- **duress** (One party married the other out of real fear for his or her life, health, or freedom. Note that there must be genuine fear for duress to be involved.)

▼
duress: *the compelling of a person to do something against his or her will by means of force or the threat of force*
▲

Duress I can understand, but I'm having trouble with mistake. I mean, how can you make a mistake about the identity of the person you're marrying or the fact that you're getting married?



I agree that it's not very likely, but it can happen. You could be standing next to an identical twin, for example, or a bride whose face is covered with a veil. And in some cultures brides and grooms see very little of each other prior to the wedding. As for the ceremony, it's possible that someone might think they were going through a practice or a mock wedding when, in fact, it was the real thing.



Element #5: Permissible Relationships

▼
affinity: a relationship that is created by marriage

consanguinity: a blood relationship
▲

Two people getting married can't be too closely related to each other either by **affinity** or **consanguinity**. For example, you can't marry your brother or sister.

2. Take the affinity/consanguinity test that follows. Indicate whether you think the law allows or prohibits each of the following marriages.

- a. A man wants to marry his stepmother.
- b. A man wants to marry his first cousin.
- c. A woman wants to marry her husband's uncle (after her husband has died).
- d. A woman wants to marry her nephew.
- e. A man wants to marry his grandson's wife (after his grandson has died).
- f. A woman wants to marry her second cousin once removed.
- g. A woman wants to marry her husband's grandson (after her husband has died).

Compare your answers with those in the Appendix, Section 3: Activity 1.

Element #6: Freedom of the Parties to Marry

If a marriage is to be legal, neither party may be currently married. In other words, both bride and groom must be single, widowed, or divorced. Proof may be required that a divorce has been finalized or that a previous spouse has died.

Element #7: Mental Capacity

At the time of the marriage, both parties must be able to understand the nature of the ceremony and the duties and responsibilities that marriage entails.

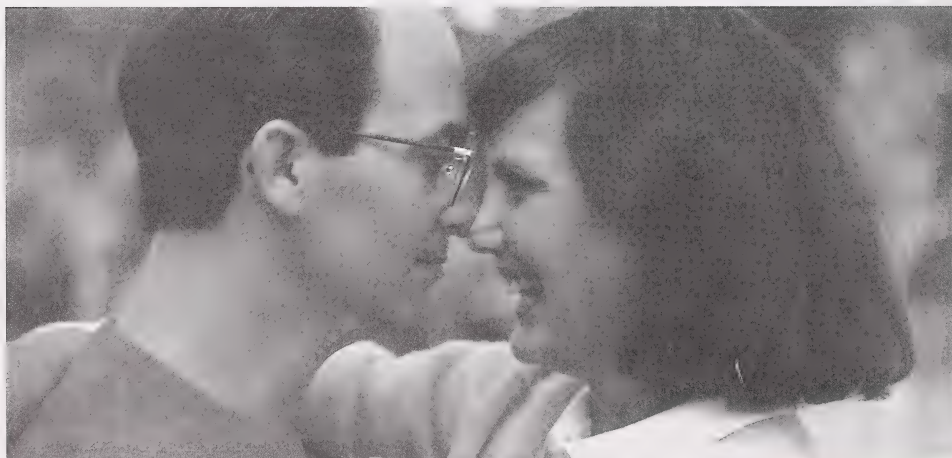


3. You're a lawyer and clients have approached you with the following questions. Create a chart like the one here and in it check the Yes or No box for each question. As well, provide an explanation for each of your answers.

Client's Question	Yes	No	Explanation
My sixteen-year-old son wants to get married. Can I stop him?			
Friends of mine are first cousins. They're interested in getting married. Is this legal?			
I just discovered that my husband's divorce from his first wife was never made final by the court. Are we legally married?			
My friend got drunk and married her boyfriend in Las Vegas. Is this a legal marriage?			
My brother got his girlfriend pregnant. The parents are threatening to harm him if he doesn't marry her. Is this legal?			

Compare your chart with the one in the Appendix, Section 3: Activity 1.

At this point you should have a good idea of the legal requirements of a marriage. In the next activity you'll be exploring the advantages and disadvantages of marriage as opposed to cohabitation.



ACTIVITY 2

Marriage Versus Cohabitation

▼
cohabitation:
*living together as
husband and wife
though not legally
married*
▲



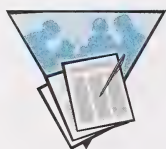
Do you know any couples who are living together as if they were married but who've never actually made their relationship legal? It's possible that you live in this sort of situation yourself. **Cohabitation**, or living together as husband and wife without being legally married, is an alternative to marriage that's becoming more and more commonplace these days.

As you saw in the preceding activity, a couple who live together in a relationship of this sort have what's often called a *common-law marriage* (or *union*). By law they're not considered to be married, but in some areas of the law they may have the same rights and responsibilities as legally married people.

1. Common-law unions are far more popular than they used to be, so much so that it's been necessary to develop new terminology for "spouses" in this sort of relationship. Expressions like *boyfriend* and *girlfriend*, *special friend*, and simply *common-law husband* or *wife* don't always seem appropriate; so new expressions such as *partner* and *life partner* are now being used.

Well, any of those is better than the expression a friend of mine uses. She calls her partner her significant other!





Why this growing popularity? Try making a chart like the one that follows and in it list as many reasons for entering into a common-law relationship as you can think of. Then list as many reasons in support of marriage as you can. Write up a brief conclusion in which you present your own feelings on the subject.

MARRIAGE OR COMMON LAW	
In Support of Marriage	In Support of Common Law

Compare your chart with the one in the Appendix, Section 3: Activity 2.

In the eyes of the law there are many differences between being married and cohabiting. These differences vary somewhat from province to province, and they do seem to be changing gradually to reflect the new reality of common-law relationships. The chart that follows very briefly outlines many of the essential differences as they exist in Alberta.

MARRIAGE/COHABITING—RIGHTS AND OBLIGATIONS

	Marriage	Common Law
Debt and Credit	<ul style="list-style-type: none"> • Spouses remain responsible only for their own debt. • If one spouse dies, money owing may be claimed by creditors before the other can inherit. 	<ul style="list-style-type: none"> • Partners have no right to use each other's credit cards. • Each partner assumes sole responsibility for his or her debts unless the other cosigns.
Support of Partner	<ul style="list-style-type: none"> • Each spouse is obliged to support the other. 	<ul style="list-style-type: none"> • Neither partner is obliged to support the other.
Inheritance	<ul style="list-style-type: none"> • If either spouse dies without a will, his or her property goes to the other one (to be shared with children if there are any). 	<ul style="list-style-type: none"> • If either partner dies without a will, his or her property goes to the closest surviving relative, not the other partner. • If either partner acknowledges children from the relationship, those children are guaranteed a right in the inheritance.
Rights of Children	<ul style="list-style-type: none"> • Spouses are obliged to provide for their children. 	<ul style="list-style-type: none"> • Partners are obliged to provide for their children but not for each other. • Children from the relationship can't take their father's name unless he acknowledges them as his children.
Ownership of Property	<ul style="list-style-type: none"> • Each spouse retains ownership of personal property during the marriage. 	<ul style="list-style-type: none"> • Each partner retains ownership of his or her property and can take it if the relationship breaks up.
Ending a Relationship	<ul style="list-style-type: none"> • If the marriage breaks down, one spouse can petition for divorce. The courts will decide on property distribution. • One spouse may be required to provide financial support for the other. 	<ul style="list-style-type: none"> • If the relationship breaks down, the partners separate as if they were business partners. Each one takes what he or she brought into the relationship unless they have a written contract to determine ownership. • Natural fathers are expected to help support their children.

2. Ed and Gisela have been living together in a common-law relationship for two years. Ed has become terminally ill, and shortly before dying he reassures Gisela that though he's never made out a will, the courts will see that all his property will go to Gisela who is for "for all intents and purposes" his wife. Should Gisela be comforted by this? Explain why or why not.
3. Dmitri moves in with his girlfriend, Liz. Because Dmitri's fridge and stove are newer than Liz's, the couple decides to keep them, and Liz sells her old ones. Three years later, when the relationship breaks down, Dmitri wants to take his appliances with him, but Liz claims they now belong to the household. She insists they sell them and split the profit evenly. With whom would the courts agree? Explain your reasons.
4. While in a common-law relationship, Andrea borrows money to buy furniture and has trouble repaying it. She asks her partner to help, but he says he's not responsible for her debt even though he's been using the furniture. Who's right? Justify your answer.
5. Your best friend is thinking of living with a person rather than marrying him (or her). List **two legal** advantages and **two legal** disadvantages of doing this.

Compare your answers with those in the Appendix, Section 3:Activity 2.

▼
cohabitation agreement: a contract between two people living common law that lays out the rules of property ownership and the obligations each partner owes the other

In the last box of the chart you were looking at entitled Marriage/Cohabiting—Rights and Obligations, mention is made of common-law partners having a written contract laying out the rules of property ownership for them. A contract of this sort is called a **cohabitation agreement**. With a cohabitation agreement a couple can work out in advance just who owns what along with what obligations each partner will have in the relationship.



6. a. Explain the advantages of having a cohabitation agreement.
- b. Despite the obvious advantages of an agreement of this sort, many couples continue to live common law without one. Suggest reasons why this is so.
- c. Imagine you're entering a common-law relationship and you and your partner have decided to work out a cohabitation agreement. Think about how you'd want things set up and write out the agreement the way you'd like it. If you have a friend or study partner with whom you feel comfortable enough, work on this together, assuming that the two of you will be drawing up the agreement for yourselves.

Compare your answers with those in the Appendix, Section 3:Activity 2.



In this activity you've had an overview of some of the differences in legal rights and obligations for married people and couples in common-law relationships. This is information that many people in—or considering entering—cohabitation situations don't have. Make sure if you're ever in this position that you fully understand all the legal implications of just what you're getting into.

FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you do the Enrichment.



Extra Help

Our legal system recognizes two types of living arrangements with a partner: a legal marriage and common-law relationship. There are advantages and disadvantages in either situation depending upon the circumstances.

1. Marcia has been living in a common-law relationship with David for the past ten years. David has fallen in love with another woman and is planning to end the relationship. Marcia is worried that she won't be able to provide for her three children (one of whom is from a previous relationship).
 - a. What kind of compensation are Marcia and the children entitled to?
 - b. If Marcia and David had been married, what kind of compensation would she and the kids be entitled to?
2. Indicate whether each of the following statements is true or false. If false, explain why.
 - a. Solemnization of marriage is an area of law legislated by the provinces and therefore varies from province to province.
 - b. Sterility, the inability to have children, is grounds for an invalid marriage.
 - c. An invalid marriage may be granted by the courts if, after the marriage, one party becomes insane.
 - d. Partners in a common-law relationship assume responsibility for each others debts and credits.



- e. A cohabitation agreement can help to determine the ownership and obligations of partners in a common-law relationship.
- f. In Alberta females can marry if they're under sixteen only if they're pregnant.
- g. If a man tricks a woman into marrying him by telling her it's only a mock ceremony, the woman can declare the marriage void.
- h. It's legal for first cousins to marry.
- i. Common-law couples are legally obligated to support their children but not each other.
- j. Common-law couples inherit from each other just the way married couples do.

Compare your answers with those in the Appendix, Section 3: Extra Help.



Enrichment

Do **one** or **more** of the following.



- Using reference materials in your school or community library, including CD-ROM and the Internet, try to get hold of information on numbers of marriages versus common-law unions in Alberta and across Canada. See if you can get statistics for several years back to discover how things are changing. When you've obtained your information, write up a one-page summary of your findings and create a poster to display your information.
- If you're interested in the whole issue of the legal aspects of common-law arrangements as opposed to marriage, do some research on the topic in your library. Your librarian can help you find information. You might begin with the Dial-A-Law topic #126—*Commonlaw Relationships*. If you can, consider arranging an interview with a social worker or family-law lawyer. If you do this, be sure to review the hints on interviewing offered in the Enrichment for Section 1.

Note: If you want to do an interview of this sort, another idea is to wait until you've completed the next two sections so you'll have a broader range of questions to ask.

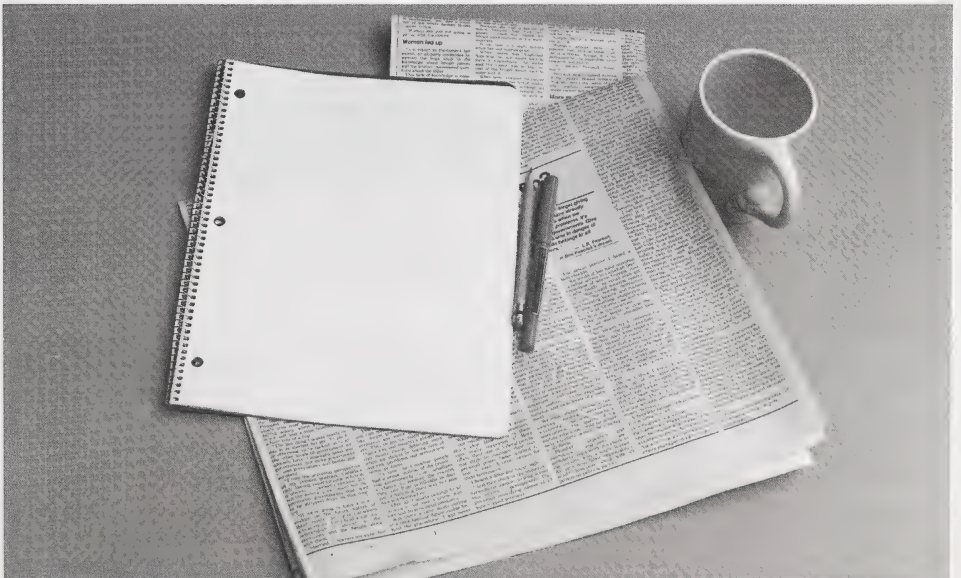
When you've done your research, write up your findings in a short report. If you're in a classroom situation, ask your teacher if you can present your paper to the class. It should make for an interesting discussion.



3. Is marriage something that governments need to control by imposing regulations about such things as age, capacity, and so on; or is it a matter to be determined and decided entirely by the couple? Prepare a one-page paper to support your position or, if you have a study partner, take sides and debate the topic.
4. If you can get hold of a copy, watch the fifteen-minute videotape *Marriage and Common Law*, part of the series *You and the Law* produced by ACCESS and the Alberta Law Foundation. Keep an eye out especially for the differences in the rights that exist in a marriage and a common-law relationship.
5. The issue of the rights of common-law partners is attracting a good deal of attention these days. For example, cases have come up in which couples have cohabited for years, each contributing to the union, but keeping the property in one partner's name. When a relationship like this breaks down, many people feel that the law allowing that spouse to retain all property isn't fair. Sometimes the courts agree.



Look in newspapers and magazines for reports and discussions of issues like this related to common-law unions. If you can, clip or summarize the articles and either collect them in a scrapbook or make a bulletin-board display. Always examine the articles carefully and see how you feel about what they discuss.



CONCLUSION



In this section you've examined some of the legislation that governs a legal marriage in the province of Alberta. You've also learned some of the advantages and disadvantages of being married as opposed to living in a common-law relationship.

This section began with a description of Denis and Marie living in a common-law relationship. After completing this section you should be in a better position to advise someone like them on the legal aspects of living with a partner.

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 3.



Living with the Family

Grandparents fight for custody of grandchild

KEN PETERSEN

Norton Newspapers

Edmonton

An Edmonton couple, Joe and Doris Smit filed an appeal

Abused children taken from parents

Caldwell Press

Calgary

Two children who appear to have been physically abused



How often have you seen headlines like these in the newspaper or watched stories on similar topics on the six-o'clock news? It's an unfortunate truth of our society that encountering stories like these seems to have become almost an everyday occurrence. As much as the institution of the family is one of the great strengths of our society, the reality is that serious difficulties can arise within families, and laws are necessary to regulate relationships and protect the vulnerable.

In this section you'll be examining some of the laws related to living within the family. When you're finished the section, you should be able to explain laws governing such things as rights of family members, abuse and violent behaviour within families, and the well-being of children.

SECTION 4

ACTIVITY I

Family Law—A Look at the Legislation



PHOTO SEARCH LTD.

If you're like most people, you think of the family as an institution based on such things as love, trust, mutual understanding, and shared values. To be sure, no families are perfect, and even the ones that work best often contain friction, personality conflicts, and moments of real hostility; and unfortunately many families contain much more of this sort of thing than we might like. Still, most people think of the family as a refuge from the rigours and demands of the real world—the workplace, school, the marketplace.

Viewing family relationships as something that's controlled by laws and government is probably, then, a little foreign to your way of thinking. The fact is, however, that over time many statutes and courtroom decisions have been necessary to govern family relationships and protect family members. You've already seen some of this in the preceding section, where you looked at laws governing marriage and common-law relationships.

In Canada, both the federal and provincial governments have laws dealing with the family; however the provincial governments have a good deal more control over this area than the federal government does. For that reason you'll be looking at the principal Alberta statutes that govern family relationships.

The chart that follows summarizes these Alberta statutes. Study the chart; then answer the questions that follow it.

PROVINCIAL FAMILY-LAW STATUTES

The Statutes	What They Do
Marriage Act	<ul style="list-style-type: none"> deals with elements necessary for legal marriages: <ul style="list-style-type: none"> – capacity to marry – the rules that must be followed – the people who may perform marriage – the penalties for failure to follow the law
Dower Act	<ul style="list-style-type: none"> stipulates the rights given to a spouse in respect of the homestead (family home) and property
Matrimonial Property Act	<ul style="list-style-type: none"> lays out rights, additional to those of the <i>Dower Act</i>, concerning the matrimonial home and property
Domestic Relations Act	<ul style="list-style-type: none"> outlines the rights of married people with regard to <ul style="list-style-type: none"> – judicial separation – alimony and maintenance – protection orders – guardianship and custody of minors – establishing parentage
Child Welfare Act	<ul style="list-style-type: none"> describes conditions and behaviours considered serious enough to require the government or its agent to provide protection and needed services to children
Family Relief Act	<ul style="list-style-type: none"> provides legislation providing proper maintenance and support for a surviving spouse in the event that the other dies

▼
alimony: money a court orders one spouse to pay the other for support after separation
 ▲

1. Using the preceding chart, identify the provincial statutes that would be used to find a legal remedy for each of the situations that follows.
 - a. Susan found a baby that had been abandoned in a vehicle at the local shopping mall.
 - b. Spiro's wife is filing for a divorce. He's now concerned about who will get the house.
 - c. Jon and Anja are wanting custody over their children while they go through a divorce.
 - d. Mary's husband died without leaving her anything in his will. She's now concerned about her financial survival.
 - e. Samil has failed to show up to school for the last six months now. He's only eleven.

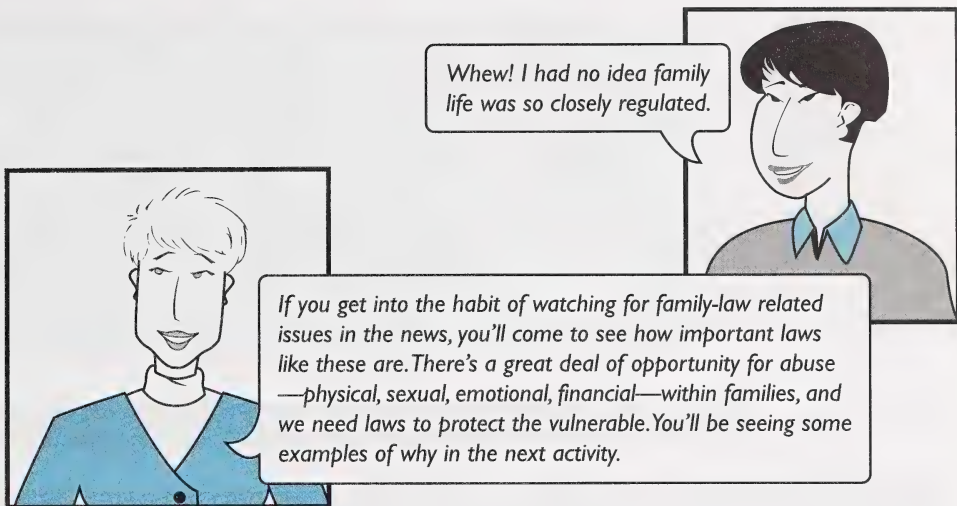


2. Test your ability to decipher legalese. What follows are clauses from the Alberta statutes you've been introduced to. Translate each one into your own words and then identify the statute it's probably from.



- a. The interim order may direct the payment of periodical sums of money, and the amount of the alimony directed is in the discretion of the Court.
- b. No married person shall... make a disposition of [i.e., sell or leave to someone in a will] the homestead of the married person whereby any interest of the married person will vest or may vest in [be in the control of] any other person at any time... unless the spouse consents thereto in writing... .
- c. (1) No person shall
 - (a) issue a marriage licence for, or
 - (b) solemnize the marriage of, any person under the age of 16 years.(2) This section does not apply with respect to a female who is shown by the certificate of a physician to be either pregnant or the mother of a living child.
- d. If a person
 - (a) dies testate [with a will] without making in his will adequate provision for the proper maintenance and support of his dependants... a judge... may in his discretion,... order that such provision as he considers adequate be made...
- e. If he has reasonable and probable grounds for believing a child to be a neglected child,
 - (a) a child welfare worker,
 - (b) a peace officer,
 - (c) the Director, or
 - (d) a person specifically authorized in writing by the Director, may apprehend the child without a warrant.
- f. The Court may, in accordance with this section, make a distribution between the spouses of all the property owned by both spouses and by each of them.

Compare your answers with those in the Appendix, Section 4: Activity 1.



ACTIVITY 2

Abuse and Violence Within Families

Types of Abuse

How much do you know about abuse and violent behaviour within families? Find out by taking the quiz that follows.

1. Decide whether each of the following statements is true or false. Revise each one that you label as false so as to make it true.
 - a. Only behaviour that results in physical injury can accurately be called “violent behaviour.”
 - b. Only when the abuse is severe and repeated is there significant damage to the person being abused.
 - c. The “rule of thumb” was an American law stipulating that a husband could punish his wife with a whip or rod no thicker than his thumb.
 - d. Using violence against a person as a “problem-solving device” is learned behaviour.

- e. Passive, non-assertive girls and women are more often the victim of male violence than are stronger, aggressive women.
- f. It takes two to create an abusive situation. Both male and female share responsibility for the violence.
- g. Once the abuser apologizes and promises to change his or her behaviour, it's safe to return to the relationship.
- h. Violence within a family is never justified.¹

Compare your answers with those in the Appendix, Section 4: Activity 2.

family violence:
*any behaviour by
 one family
 member against
 another that may
 endanger the
 person's survival,
 security, or well-
 being*

The situations in the preceding questions should clarify some of the myths and realities about **family violence**. Family violence is any behaviour on the part of one family member against another that may endanger the second person's survival, security, or well-being. This may well include behaviour between individuals in a close, on-going relationship. *Abuse* is another term for this sort of behaviour.

Family violence (or abuse) may take many forms:

- *Emotional or psychological abuse* includes putdowns, criticisms, intimidation, isolation, controlling with fear, or any behaviour that undermines the mental or emotional well-being of another.
- *Economic abuse* involves controlling, exploiting, or limiting another person's access to financial resources; misusing of another's funds; and cheating or stealing from a family member.
- *Physical abuse* is the intentional application of physical force to a family member. Examples include pushing, shoving, slapping, kicking, punching, spitting, pinching, pulling hair, choking, throwing things, hitting with an object, using or threatening to use a weapon, locking someone out of the house, abandoning someone in an isolated or unsafe place, sexual assault, driving recklessly with another present in the vehicle, and threatening to harm or kill a person.
- Neglect is an act of omission that causes significant emotional or physical harm to a family member for whom one is responsible.

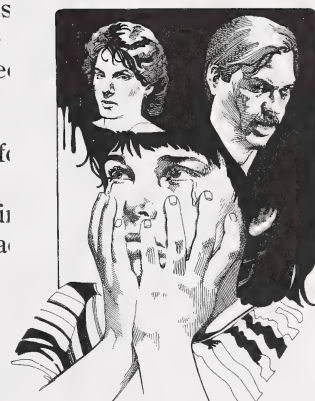
¹ Roberta Beecroft, "Feeling Great: Violence and Values... Ending the Pain," from *TG Magazine*, Fall/Autumn 1993, 36–39. Reprinted by permission of Teen Generation Inc.

2. In each of the following situations, identify the type of abuse involved.
 - a. Patrick is the only income earner in the family and gives his wife enough money to buy groceries. She's becoming frustrated because the children need shoes and other clothing. She's afraid of approaching her husband because it will only lead to another argument.
 - b. John and Odette are avid bingo players and quite often leave their three-year-old in the car when they play Saturday evenings.
 - c. Marge and Zdzislaw have been having financial problems for the last three years. One day Zdzislaw came home and started slapping his wife over some issues dealing with finances.
 - d. Sirah has been complaining to Amelia about how much weight she's put on and has threatened her that she'd better lose the weight or else.

Compare your answers with those in the Appendix, Section 4: Activity 2.

Legal Remedies for Abuse

Though people caught up in abusive family relationships often do feel helpless, the fact is that whatever form the abuse is taking, there are legal remedies available. Three of them are outlined in what follows.



assault: the attempt or threat, by act or gesture, to apply force to another

peace bond: a court order requiring an abusive spouse to keep the peace, demonstrate good behaviour, and obey other conditions decided on by the court

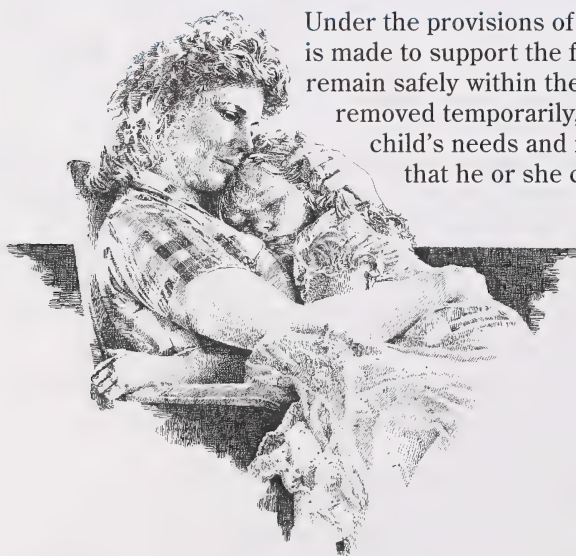
restraining order: a court order requiring an abusive spouse to stop molesting, annoying, or harassing the other spouse and/or the children

guardian: a person appointed to take the legal responsibility for a minor

- If physical abuse takes place between two adults (for example, between two spouses), the victim may contact the police and file a charge of **assault** against the abuser. *Assault* is the attempt or threat, by an act or gesture, to apply force against another person. Assault is a crime under the *Criminal Code*. The police are instructed to lay charges against the offending partner when they believe they've found evidence of assault.
- Another alternative for a victim of an abusive situation is to apply to the courts for a court order requiring the abuser to change his or her behaviour. Two common types of court orders are
 - **peace bonds:** court orders requiring the abusive spouse to keep the peace, demonstrate good behaviour, and obey any other conditions the court may include
 - **restraining orders:** court orders requiring the abusive spouse to stop molesting, annoying, or harassing the other spouse and/or the children
- If a minor is suffering abuse at the hands of his or her parent(s) or **guardian(s)**, the *Child Welfare Act* requires the government to provide protective services if there are reasonable and probable grounds to believe that the survival, security, or development of the child is endangered.

Following is a list of situations in which the authorities may step in under the *Child Welfare Act* and offer protection.

- The child has been abandoned or lost.
- The parent or guardian of the child is dead and the child has no other guardian.
- The parent or guardian of the child is unable or unwilling to provide the child with the necessities of life (food, shelter, clothing) as well as proper medical, surgical and dental care.
- The child has been, or there is substantial risk that the child will be, physically injured or sexually abused by the parent or guardian of the child.
- The parent or guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse.
- The child has been emotionally injured by his or her parent or guardian.
- The parent or guardian of the child is unable or unwilling to protect the child from emotional injury.
- The parent or guardian of the child has subjected the child to, or is unable or unwilling to protect the child from, cruel and unusual treatment or punishment.
- The condition or behaviour of the child prevents his or her parent or guardian from providing the child with adequate care appropriate to meet the child's needs.



Under the provisions of the *Child Welfare Act* every effort is made to support the family unit and allow a child to remain safely within the home. If a child must be removed temporarily, every effort is made to meet the child's needs and make the necessary changes so that he or she can return home.

3. The following article appeared on the *Edmonton Journal's* Internet website on October 4, 1996. Read it carefully; then answer the questions based on it.

Advocates Call for Action on Child Abuse

Canadian Press

EDMONTON – The tragic life of Jason Carpenter, who was born in a drug den and died after five years in a coma, shows Alberta's child welfare system isn't working, says the province's children's advocate.

Jean Lafrance said Thursday it's time to stop tinkering with rules and get to the causes of child abuse and neglect – poverty, alcohol and substance abuse and people who don't know how to be parents because of their own poor upbringing.

"When I look at this I get really frustrated and I say 'When are we going to get back to really deal with what's creating this?'" Lafrance said.

He was commenting on the Carpenter case a day after Jason's accused abusers, former foster parents Rod Lenny and Theresa Martel, won another appeal and had their convictions overturned for the second time.

"I've been suggesting... that we need in this province a reinvestment (in social and prevention programs)," Lafrance said.

"People talk about deficits and fiscal policy. I think we need a social policy that says 'Fine, we need to reinvest in some areas that will pay off in a big way.'"

Child welfare officials apprehended Jason and his sister from the drug den where they lived with their mother in 1990. The children were placed with the Lennys.

Several weeks later, paramedics found Jason, a 19-month-old, covered in bruises and unconscious.

He lived the rest of his life in a coma until he died in February 1995.

The high-profile case came back to the public spotlight Wednesday when the Alberta Court of Appeal overturned the couple's abuse convictions from a second trial.

The accused didn't get a fair trial, the appeal court decided, citing errors the trial judge made in summing up evidence to the jury.

Lafrance, who has the power to delve into child welfare cases, said he doesn't know yet if he'll investigate how the Social Services Department handled Jason's case.

"If we were to go back to re-examine the whole situation... it would be from the perspective of what can we learn from this unfortunate circumstance that will help us prevent these sorts of things from happening in the future."

He said he hopes changes to Alberta's child welfare system, which is being decentralized and divided into 17 regions run by community-based agencies, will improve it.

The system hasn't really changed since it was introduced in the 1960s except to become more bureaucratic, Lafrance added.

When high-profile abuse cases occur there are usually reviews that end with recommendations that make a social worker's job far more cumbersome, he said.

"We end up trying to fix each one by adding more procedures and more paperwork. In the end we've created a system that spends more time feeding itself."

Meanwhile, after six years and two child abuse trials, the public still doesn't know what really happened to Jason, Liberal social services critic Terry Kirkland said.

"I think it's wise we have appeal courts to ensure the justice system is functioning properly," Kirkland said.

"But if there is guilt associated with this, and these individuals are released on a technicality, I think the system has failed. I hope that's not what happened here."

Justice Minister Brian Evans was unavailable for comment. His department has to decide whether to go ahead with a third trial.

The Lennys are now divorced.¹

- a. According to this article, what are the real causes of most child abuse and neglect?
- b. Why did the Alberta Court of Appeal overturn the Lennys' abuse conviction?
- c. Look back at the reasons allowed by the *Child Welfare Act* for the authorities to step in to protect children. Which of these reasons would have been involved in the Lennys' situation?
- d. In a sentence or two summarize the main point the writer of this article is trying to make.

Compare your answers with those in the Appendix, Section 4: Activity 2.

As you can see from this activity, abuse within families is an issue the law takes very seriously. You should now have an idea of different sorts of abuse and some of the remedies available to deal with it. The next activity will deal at greater length with remedies of this sort when the victim of abuse is a child.

¹ "Advocates Call for Action on Child Abuse," *The Edmonton Journal*, 4 October 1996, <<http://www.southam.com/edmontonjournal/news/alberta/100496ab4.html>> (28 February 1997). Reprinted by permission of The Canadian Press.

ACTIVITY 3

Children's Rights



Protecting Children's Rights

If you keep an eye on the news, you've likely noticed a good deal of attention being paid to the issue of child labour—usually in developing countries. In some countries children as young as three and four are forced to work in dreadful conditions six or seven days a week, denied any education, and given only the necessities needed to keep them alive and working.

1. Why is child labour a common practice in some countries. Suggest reasons why employers in some cases would want to have children working for them rather than adults.

Compare your answer with the one in the Appendix, Section 4: Activity 3.

In Canada, as you've seen, there are laws to protect children (that is minors) from this sort of thing. Here children, even though they lack all the rights of adults, are given basic rights deemed necessary to protect them from neglect and exploitive adults. Children's basic rights can be broken down into four main categories:

- the right to parents or guardians
- the right to education
- the right to financial support
- the right to protection from harm

In Activity 2 you looked briefly at the role of the Alberta *Child Welfare Act* in protecting children's rights, and you were given a list of situations that give the authorities the right to step into a family to protect a child. The areas of particular concern to the Department of Family and Social Services are

- **abuse**

If parents or guardians abuse their children or cannot protect the children from abuse, children can be removed from their parents' or guardians' custody for their own protection. Abuse can be physical, sexual, emotional, or mental.

- **abandonment**

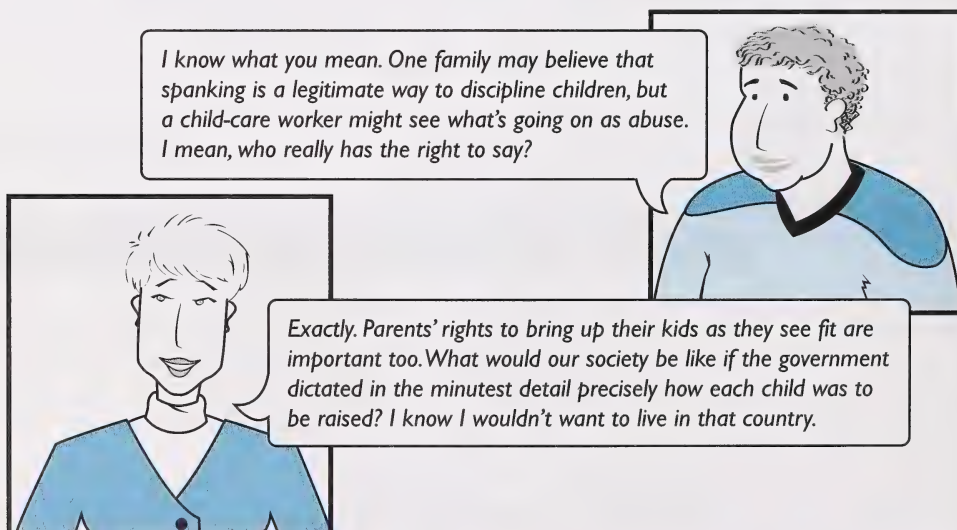
If parents or guardians abandon their children, the state can assume responsibility for the children's care. Necessities of life include food, shelter, and clothing as well as essential medical, surgical, or other remedial treatment as recommended by a physician.

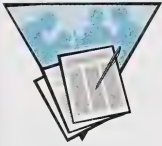
- **child's condition or behaviour**

If parents or guardians are unable to provide care appropriate to meet their children's needs because of their children's condition or behaviour, the children may be removed from the home and placed in another environment.



Of course a government's ability to step into a family and remove the children is a power that has to be used carefully. The family unit is still the backbone of our society; and tearing apart this unit, separating children from their parents, and taking the responsibility of deciding what's best for the children isn't something to be undertaken lightly.





2. What are your views on this issue. Should parents be able to use physical force like spanking to discipline their children? If so, how far should they be allowed to go with it? Present your answer in a short position paper. If you have a study partner, take sides and debate the issue.
3. You sometimes hear in the news about parents' refusing, because of religious beliefs, to give permission for blood transfusions for their ill children. In such cases the attending doctors can apply to the courts for temporary custody of the infants. The courts usually grant this custody.
 - a. Why do you think the judges award temporary custody of the children to the medical institution?
 - b. Do you think the rights of the parents have been infringed upon in cases like these? Explain your reasons?

Compare your answers with those in the Appendix, Section 4: Activity 3.



I have a question. In the newspaper article we read in the last activity, it talked about the province's children's advocate. Who's that and what role does he or she play in all this?

The children's advocate is an official appointed to support children receiving services under the Child Welfare Act. The advocate helps them get the assistance they need to ensure that their concerns are heard and that the system is working to help them, not cause more problems for them. The children's advocate is sort of a voice for children: and, as you've seen, he or she can investigate child welfare cases to see if the government's handling them properly.



As you can see, the issue of protecting children's rights involves many stakeholders—the children themselves, of course, but also their parents or guardians, child-care workers functioning under the *Child Welfare Act*, the children's advocate, and so on. In fact, society at large has a tremendous stake in the issue; after all, our children are our future.



One group of stakeholders that sometimes gets forgotten is grandparents. When difficult family situations develop and family units fall apart, grandparents can get lost in the shuffle, even though they may be the best people to provide the very stability and love the children involved need.

In fact, an organization called the Canadian Grandparents' Rights Association has been formed to support and assist grandparents and their families in maintaining or re-establishing family ties and stability where the unit has been disrupted—especially ties between grandparents and grandchildren.

When a child is apprehended (taken) from his or her parent(s) or guardian(s) under the authority of the protection agency, that child is

called a **ward** of that agency. In Alberta, only the Department of Family and Social Services and the police have the authority to apprehend a child. The minister of Family and Social Services then becomes the legal guardian of that child. The child may be placed temporarily in a foster home, though the ultimate goal is to return him or her to his family if that's at all possible.

And that's your overview of children's rights. It's an issue that's very much in the public eye at present; some people maintain that children are the last group in society who suffer legal discrimination. Keep an eye out for news stories dealing with aspects of children's rights; it's a fascinating topic, and an area of law that's likely to see some important changes in the future.

▼
ward: a person
under the care of
a protection
agency
▲

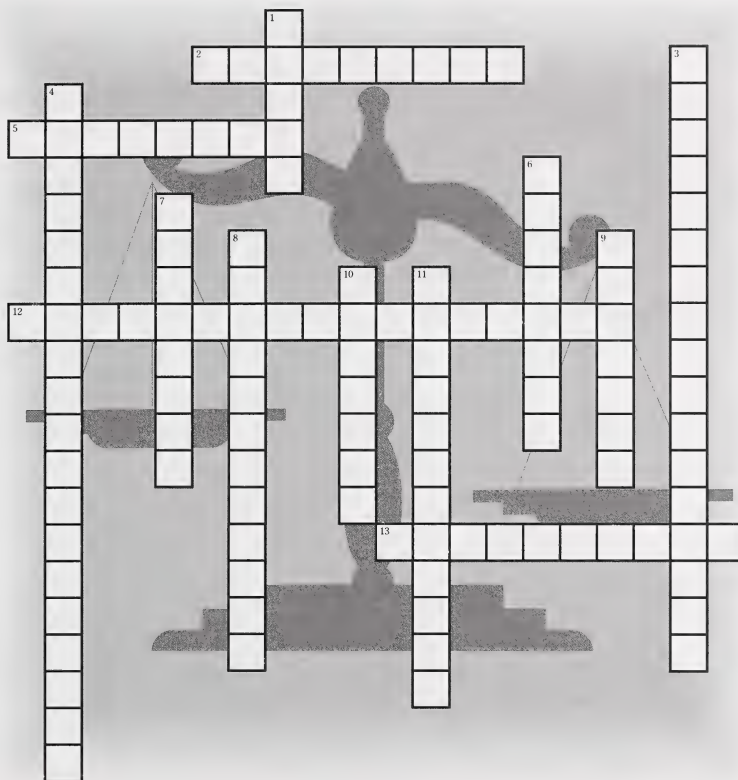
FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you to the Enrichment.



Extra Help

1. Understanding the legal terminology related to living with the family and children is very important. If the terms and expressions are confusing you, you'll have a tough time dealing with the concepts. The crossword puzzle that follows will help test your mastery of the terminology you encountered in this section. Be sure to review any terms or names of acts that give you trouble. Try to complete the puzzle without looking back if possible.



Across

2. This type of abuse can involve putting someone down or criticizing that person.
5. The _____ Act deals with things necessary for marriages to be legal.
12. The _____ Act identifies the rights of married people with respect to such things as separation, alimony, and maintenance.
13. These are a kind of court order that may require a spouse to keep the peace and demonstrate good behaviour.

Down

1. The _____ Act gives rights to spouses in respect of the homestead and property.
3. These court orders can require a person to stop bothering his or her spouse and/or children.

4. The _____ Act provides additional rights to the matrimonial home and property.
6. This type of abuse can involve controlling or limiting another person's access to financial resources.
7. This type of abuse involves the intentional application of physical force to a family member.
8. The _____ Act provides protection and needed services for children.
9. This is the attempt or threat, by act or gesture, to apply force to another person.
10. This is an act or omission causing physical harm to a family member.
11. The _____ Act provides for maintenance and support of a surviving spouse.

2. The chart that follows asks you for some legal advice. For each question, supply both your advice and the name of the statute that's involved. Note that you may have to do a bit of thinking here and perhaps apply what you know to situations you haven't yet actually encountered. This may sometimes involve a small leap in logic.

Question	Your Advice	Legislation Used
Is it true that parents can lose custody of their children if they're too poor to support them?		
Elsbeth called the police and reported that she'd been sexually assaulted by her husband, Bill. When the police arrived, Bill just laughed and claimed he was only exercising his "rights as a husband." Can the police arrest Bill?		
I'm planning on leaving my abusive wife. Do I have any rights to claim the property I own?		

Compare your answers with those in the Appendix, Section 4: Extra Help.





Do **one** or **more** of the following.

1. Alberta's *Child Welfare Act* includes no references to juvenile prostitution even though in the eyes of many people it's clearly a form of sexual abuse. The article that follows appeared in *The Calgary Herald*. Read the article carefully; then write a one-page paper agreeing or disagreeing with this statement:

The Child Welfare Act should include juvenile prostitution as an abuse against children.

Juvenile prostitution is a form of sexual abuse, report says

RON COLLINS, *The Calgary Herald*

CALGARY – The provincial government should play a key role in protecting juvenile prostitutes who are sexually abused by men.

That is one recommendation in a report by a local committee, which has studied the issue of prostitution for the past two years. The committee wants changes to the provincial Child Welfare Act to include juvenile prostitution in the legislation, defining it as child sexual abuse.

The report by the committee—which has representation from the city, social services, both school boards, city police, health services and other supporting agencies—will be released Wednesday.

"This is child sexual abuse, not anything else," said Ald. Bev Longstaff, co-chairwoman of the prostitution policy, service and research committee.

She said an attitude change is needed before anything constructive can be accomplished.

"If a child is sexually abused, whether she is a prostitute or not, it's sexual abuse and should be treated as such. These kids are victims, not offenders."

At the same time, city police say they will begin laying charges, where possible, of child sexual abuse against men who prey on juvenile prostitutes.

"We will be looking at sexual assault charges," confirmed vice unit Staff Sgt. Vern Fielder. Police say the problem is that most juvenile prostitutes won't complain out of fear of retribution from their pimp, so obtaining evidence is difficult.

Police now typically lay only minor charges of soliciting for the purpose of prostitution.

A serious sexual assault conviction can carry a maximum term of life imprisonment.

"It became clear there's no one specific government organization" mandated to deal with juvenile prostitution, added committee co-chair Sue McIntyre. The Child Welfare Act is "silent to the issue of prostitution."

However, Social Services Department spokesman Bob Scott said Monday: "I don't think it will fly. Prostitution is federal jurisdiction."

Juvenile prostitution is "nothing more than child abuse," said Mayor Al Duerr, "and if we can start calling it what it is we can make a difference."

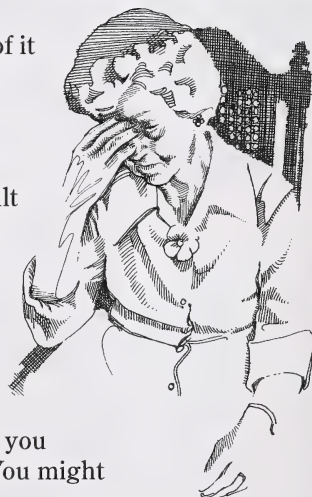
Police estimate between 50 and 55 girls between the ages of 12 and 17 work Calgary streets as prostitutes, Fielder said.

The committee's report also suggests a more collaborative approach by all agencies to identify young girls at risk and prevent them from becoming victims.

School boards, public health agencies, and mental health and social services agencies will be encouraged to work in harmony to tackle the problem.¹

Compare your answer with the one in the Appendix, Section 4: Enrichment.

2. Because family violence is receiving a good deal of media attention these days, people are more aware of it than ever before. More and more people who in the past would have suffered in silence are coming forward with their stories and often laying charges. And it's not just abuse against wives and children. Issues such as husband abuse, parent abuse (by adult children against elderly parents), and abuse against family members with disabilities are all things we're hearing about all too often.



There's a good deal of literature available to inform people about abuse, their rights, and the steps they can take to get help. If this topic interests you, do some research into it and see what you can find. Your librarian should be able to help you. You might also contact the following organizations:

- Office for the Prevention of Family Violence
11th Floor, South Tower
10030-107 Street
Edmonton, Alberta
T5J 3E4
(403) 422-5916

¹ Ron Collins, "Juvenile prostitution is a form of sexual abuse, report says," *The Calgary Herald*, 28 February 1996, <<http://www.southam.com/calgaryherald>> (28 February 1997). Reprinted by permission.



(Ask about the series of booklets *Breaking the Pattern* and other publications.)

- The Legal Resource Centre
10049–81 Avenue
Edmonton, Alberta
T6E 1W7
(403) 492-5732

(Ask about their *LawPac* series of tipsheets.)

As well, you can try once again the Dial-A-Law series produced by Calgary Legal Guidance (see Section 1: Enrichment). Programs to listen to are

- 121 *Restraining Orders*
- 122 *Battered Spouses*
- 123 *Battered Women*
- 124 *Children Needing Protection*
- 901 *Spousal/Partner Abuse*
- 902 *Suspected Family Violence*
- 903 *Child Abuse*



Of course the Internet is a wonderful source of information on family violence. You can set up a search on topics like *family violence*, *child abuse*, *spousal abuse*, and so on and see what you come up with.

3. Create a collection of news stories related to family violence in Alberta or some aspect of it. Note carefully the legal angles of the issues discussed. Try to develop a feel for the procedures and organizations involved in trying to deal with this serious issue.
4. Another area concerning the rights of children and parents is that of adoption. In Alberta two types of adoption are permitted—government adoption and private adoption—but in both cases the rules and regulations are set out in the *Child Welfare Act*.

If you're interested in the legal aspects of adoption in Alberta, do some research into it and see what you can discover. A good place to start looking for information is with the *Department of Family and Social Services*, though your librarian should be able to find material for you as well (to get started, try program 136 *Adoption* in the Dial-A-Law series). One very topical issue these days is the rights of adopted children and their birth parents to have their identities revealed to each other, though you might prefer to research other adoption issues.

When you've found the information you're after, write up your findings in a short report.



CONCLUSION



In this section you've examined some of the legislation governing families and children. You've also learned something about the remedies available to a spouse and children living in an abusive situation, and you've looked at the question of children's rights in general.

The section began with a couple of newspaper headlines dealing with issues involving the family and children. At this point you should be able to understand the legal aspects of issues such as these more fully than you did before.

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 4.



Leaving a Partner



TABITHA and Mitch are having problems with their marriage; they're seriously considering a legal separation and divorce. Tabitha thinks that perhaps if they separated for a while and thought things over they could work out their problems, but Mitch is convinced that nothing would be achieved by doing this. In his opinion, he and Tabitha simply want different things in life and are no longer compatible. Of course the couple are worried about the effects of divorce on their children, and neither of them intends to give the kids up to the other one without a fight.

Unfortunately, situations of this sort are all too common in today's society. In this section you'll look at the legal aspects of separation and divorce. When you've finished the section, you should be able to describe the difference between legal separation and divorce and explain some of the basic laws relating to leaving a partner, dividing property, establishing custody of children, and providing maintenance for the less financially secure partner.

SECTION 5

Leaving a Partner—A Look at the Legislation



How many marriages do you know of that have ended in divorce or separation? The rate at which marriages fail seems to be ever increasing, and this is a situation with which our courts and lawmakers have to deal.

There are several ways to end a troubled marriage. They range from simply living separately, through desertion, to divorce. In this activity you'll get a short introduction to the laws that govern marriage breakdowns. The activity that follows will look more closely into just what happens when couples break up.

▼
judicial separation: a judgment that does not affect the legal status of a couple as married but acknowledges the deterioration of the union

divorce: the legal dissolution of a marriage

corollary relief: secondary relief including child custody and access, child support, and spousal support

custody: the care of a child, awarded by a court to a parent in a divorce

visitation: the right of a parent who has not been awarded custody in a divorce to visit his or her child or children

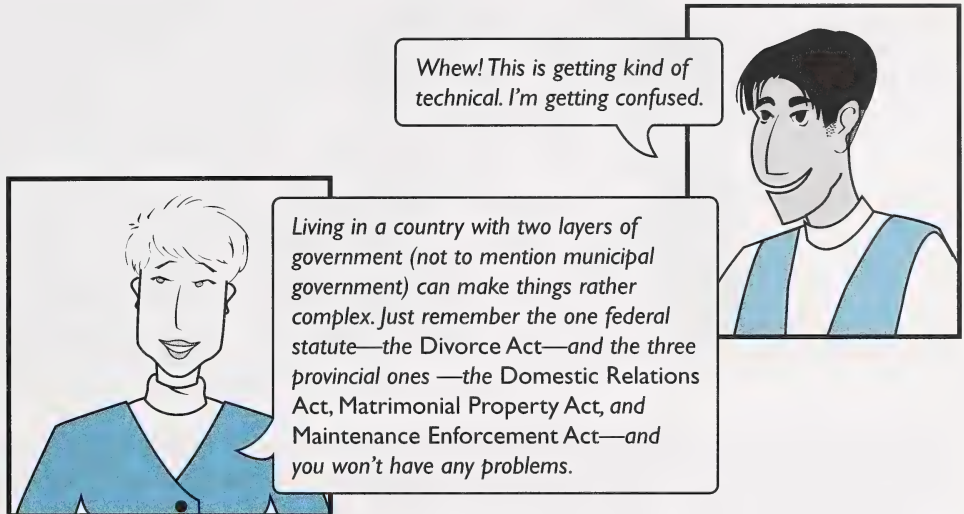
Sometimes when a marriage breaks down, the couple involved don't want a total divorce—or at least not just yet. Perhaps they want to separate for a while to see how things work out. The partners may simply move into separate homes for a while, or they may go through what's called a **judicial separation**. On the other hand, the couple may opt for a complete **divorce**, which puts an end to the marriage entirely.

In Canada, laws related to leaving a partner fall under the authority of both the federal and provincial governments. Alberta's *Domestic Relations Act* is a provincial statute you've looked at in Section 4. It outlines laws related to partners who may be going through a judicial separation. This act sets out the rights of married people with regard to

- judicial separation
- protection orders
- establishing parentage
- alimony and maintenance
- guardianship and custody of minors

Divorce puts an end to a legal marriage and falls under the jurisdiction of the federal government. This means that the law governing divorcing spouses is the same across the country. The *Divorce Act*, a federal statute, provides legislation in matters related to divorce and **corollary relief**. It's within a divorce action that consideration must be given to the type of child **custody** and **visitation** arrangements that are desired along with the need for child support or spousal support.

Two other Alberta statutes come into play when marriages break down. One is the *Matrimonial Property Act*. This act (which you also looked at in Section 4) sets out specific guidelines with regard to the division of assets of a legally married husband and wife whose marriage has broken down and who can't work this sort of thing out between themselves. The other provincial statute is the *Maintenance Enforcement Act*. It enables one spouse to enforce a ruling that the other one pay support payments to him or her. This can be done through garnisheeing the defaulting spouse's wages or by having that person's assets seized or sold.



Now test your understanding by matching the acts on the right with the descriptions on the left.

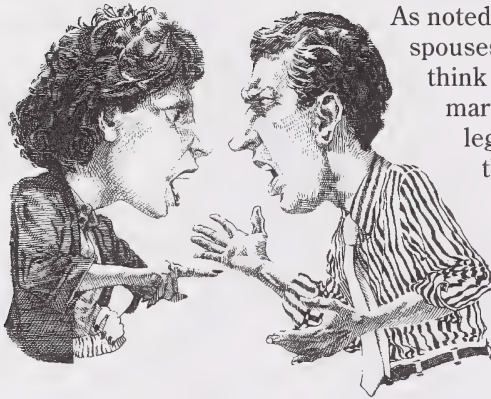
- | | |
|---------------------------------------|--|
| 1. <i>Divorce Act</i> | A. provincial statute that allows a court to garnishee a person's paycheck if he or she fails to provide support payments to a child and/or spouse |
| 2. <i>Domestic Relations Act</i> | B. federal statute that outlines the steps to end a legal marriage |
| 3. <i>Matrimonial Property Act</i> | C. provincial statute that outlines the rights of married people with regard to custody and support during a judicial separation |
| 4. <i>Maintenance Enforcement Act</i> | D. provincial statute that sets out specific guidelines with regard to the division of the property |

Compare your answers with those in the Appendix, Section 5: Activity 1.

And those are the principal laws dealing with marriage breakdown in Alberta. In the next activity you'll look more closely at the differences between legal separation and divorce.

ACTIVITY 2

Legal Separation and Divorce



As noted in Activity 1, separation between spouses is very different from divorce. You can think of it as an intermediate step between marriage and divorce wherein provincial legislation is used to try to solve some of the issues that may arise between spouses who no longer want to live as husband and wife. Of course that doesn't mean separation always leads to divorce as a next step: some couples are happy to live in the separated state while others are eventually able to patch up their marriages.

A separation is recognized as legal as soon as the spouses have stopped living together and don't intend to get back together again in the foreseeable future. Unless they obtain a divorce, however, they're still legally married. Note that the intention not to reunite is very important here, especially these days when separate careers can mean that spouses have to live apart.

▼
separation agreement: a contract made between separated spouses outlining such things as the division of property and mutual obligations

desertion: the physical absence of one spouse with the intention not to return

adultery: voluntary sexual relations between a married person and someone other than that person's spouse
▲

When spouses break up, they can follow any of three legal roads:

- They can work out a **separation agreement** on their own or with the assistance of a lawyer who helps them negotiate the issues they have to resolve, such as custody of, and access to, the children; the division of property; and support payments. This is the easiest form of separation, and couples who take this route are normally splitting up without a great many hard feelings. If they can do things this way, they'll usually save themselves a lot of aggravation and legal fees. Separation agreements of this sort often become the foundation of a divorce settlement later on.
- One spouse can apply for a judicial separation in Family Court where all aspects of the division of assets, support payments, and child custody are decided. This type of separation is necessary if one of the spouses won't agree to a separation voluntarily; it most often occurs in cases of **desertion**, assault, or **adultery**. Judicial separations aren't common; if things have reached this stage, most couples opt for divorce.
- One spouse can make immediate application for divorce and file claims for support and/or custody of any children.

1. Mr. and Mrs. Diduch's marriage seems to have broken down. Last night Mr. Diduch confessed to adultery, and his wife retaliated by slapping him. This morning the couple are still too furious to even stay in the same room with each other. Mrs. Diduch wants to leave her husband. What advice would you give her about her legal options?

Compare your answer with the one in the Appendix, Section 5: Activity 2.

If a marriage seems broken beyond repair, divorce is, as you've seen, the only way of legally ending it. If a spouse files in court for a divorce, it must be shown to the satisfaction of the judge that there has been a true breakdown in the marriage; this is the only valid grounds for a divorce. According to the *Divorce Act*, a marriage has broken down if one or more of the following can be proved:

- The spouses have been living separate and apart for at least a year and have no intention of getting back together.
- One of the spouses has committed adultery.
- One of the spouses has treated the other with physical or mental cruelty that would make future life together intolerable.

Ethics



2. You're a lawyer and a couple approaches you wanting a divorce. Their marriage hasn't broken down according to the legal definition you've just been given, but they've simply learned that they're incompatible partners. What advice would you give them? Explain your reasons.
3. Once again you're a lawyer, and clients have come to you with the questions listed in the chart that follows. Duplicate the chart and check the *yes* or *no* column for each question; then provide an explanation for your answers. You may not be sure of every answer, but use the information you have along with common sense and see how you do.

Client's Question:	Yes	No	Explanation
Do we have to go to court to get a legal separation?			
My husband and I separated six months ago, but for economic reasons he's living in the basement suite downstairs. Are we still legally separated?			
If I don't want a divorce, can I stop it even if the marriage has technically broken down?			

Marge and I have lived together for twenty years. Do I have to divorce Marge before I can marry Wanda?			
I know of at least one instance when my husband was unfaithful. Is this grounds enough for a divorce?			
My husband has been working in the oil fields in Saudi Arabia for two years. I want a divorce on the grounds that we've been living apart.			

Compare your answers with those in the Appendix, Section 5: Activity 2.

The courts won't grant a divorce to a couple who a judge believes are trying to deceive the court or who haven't made arrangements for support of the children. There are, in fact four bars to divorce, all beginning with the letter *C*:

▼
collusion: *the agreement between a couple to deceive the court in a divorce hearing*

condonation: *the forgiving by one spouse of behaviour on the part of the other that would otherwise provide grounds for divorce*

connivance: *the permitting or encouraging of one spouse by the other to do something that would provide grounds for divorce*



- **collusion:** The spouses have agreed together to deceive the court. For example, a couple may say they've lived apart for one year or more when in fact they haven't. This is collusive.
- **condonation:** One spouse knows that the other has committed some wrong, but has indicated in words or behaviour that the wrong has been forgiven. For example, a husband may forgive his wife for having had an extra-marital affair (and even continuing to have sexual relations with his wife after learning of the affair will be construed as implied forgiveness). Grounds for a breakdown of the marriage aren't considered to have occurred in a case like this since one spouse has condoned the other's actions.
- **connivance:** One spouse encourages or permits the other to commit an action that would normally be grounds for divorce. For example, if a wife has willingly consented to, or even encouraged, an act of adultery or cruelty on the part of her husband so that the two can be divorced, grounds for divorce don't exist because the two have connived.
- **care of the children:** As noted previously, the court must be satisfied that reasonable arrangements have been made for support of the children. No divorce will be granted until these arrangements are made.



4. After Mr. Chin committed adultery, Mrs. Chin moved out of the home; however, she returned two weeks later because of financial hardship though she communicated very little with her husband. In the divorce proceedings that followed, the court found that this was condonation because Mrs. Chin, by returning home, had accepted her husband's behaviour.

- a. What bar to divorce occurred here?
b. Do you agree with the court's decision? Explain your reasons.

5. Until 1985, when the *Divorce Act* was passed, it was much more difficult to get a divorce in Canada. Do you agree with the idea of making divorce relatively easy, or should it still be something that couples would be likely to do only in cases of extreme marital difficulties? Explain your answer. If you have a study partner, take sides and debate this question.

Compare your answers with those in the Appendix, Section 5: Activity 2.

You should now understand the difference between divorce and legal separation. You should also be able to explain the grounds on which Canadian courts will grant a divorce. In the next activity you'll look more closely at issues like the division of property, child support, and custody.

ACTIVITY 3

Property, Custody, Access, and Maintenance

"Who gets what when we divorce? Who will be given custody of the kids? How will I support myself?" It's usually questions like these that are uppermost in the minds of couples who are going through divorce, and it's these issues that you'll be looking at now.

Matrimonial Property

As you've seen previously, Alberta's *Matrimonial Property Act* sets out guidelines for the division of property of a legally married couple whose marriage has broken down and who can't agree on how their assets should be divided between them.





matrimonial property:

property owned in common by a married couple



The basic principal of this statute is that property that's considered to be **matrimonial property** will, unless otherwise decided by the court, be distributed equally between the spouses. This means that the court can decide to divide the property in unequal proportions if that seems appropriate. In making this decision, the judge examines the circumstances of the marriage and considers factors such as the following ones:

- contributions made by each spouse to the marriage, to the welfare of the family, and to the improvement of the property (This doesn't include only direct financial contribution such as money brought in by a spouse working outside the home; things like work as a homemaker or parent or unpaid labour on the family farm are also considered.)
 - the financial resources of each spouse at the time the marriage took place and at the time of the hearing before the judge
 - the length of the marriage
 - whether the property was acquired while the couple were living together or after they separated
 - any oral or written agreement made between the spouses
 - any other relevant circumstances
1. Several years after Mr. and Mrs. Milligan got married, they had a formal contract drawn up with the help of a lawyer. In it they agreed that if they ever divorced, Mrs. Milligan would keep possession of the summer cottage they'd bought. Many years later, when the couple actually did divorce, they learned that the value of the cottage had increased far beyond their expectations. Mr. Milligan applied to the courts to have the property distributed more fairly.



What would the courts likely decide? Explain your reasons.

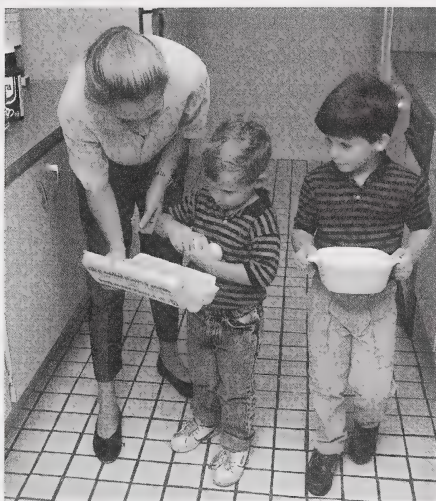
Ethics



2. Throughout their thirty-year marriage, Mr. Kabaroff worked outside the home while Mrs. Kabaroff looked after the household. Both spouses worked very hard all their married life. Mr. Kabaroff has decided to divorce his wife, and claims that, because he contributed all the financial resources to the household while his wife stayed home, he should be entitled to most of their matrimonial property.
 - a. What would the court likely decide? Why?
 - b. Would you agree with this decision? Explain your reasons.

Compare your answers with those in the Appendix, Section 5: Activity 3.

Custody



If a divorcing couple has children, they often pose one of the most difficult problems to resolve. Custody battles between spouses are all too frequent, and they can be terribly hard on both spouses and—above all—on the children themselves.

As you've seen, a parent awarded *custody* is given the right to take control, and care, of a child after a divorce. Custody may be set out in a separation agreement; or, if the couple can't work it out for themselves, it may be decided by the court. There are two possible types of custody:

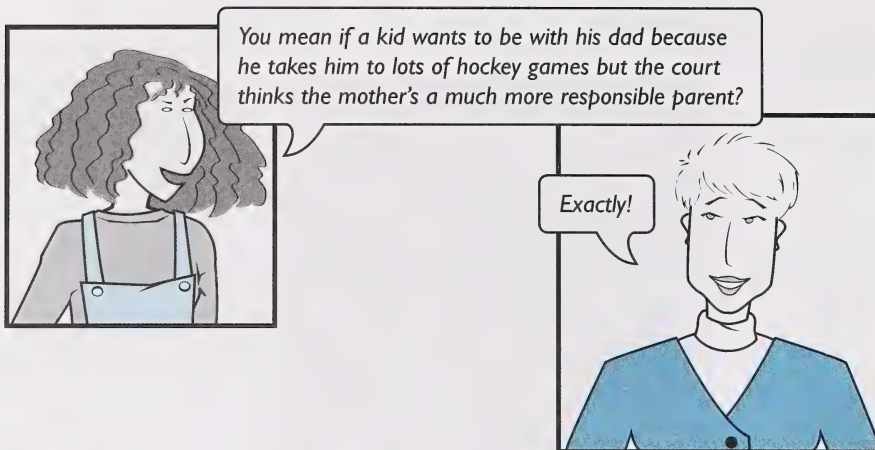
▼
joint custody: a court order giving both parents legal responsibility for important decisions regarding their child

sole custody: a court order giving only one parent legal responsibility for important decisions regarding his or her child
▲

- **Joint custody** occurs when parents share responsibility for important decisions regarding a child, such as education and health care. In cases where joint custody is granted, actual physical custody of the child (which household he or she lives in) is usually decided by the parents. It often means that the child will live with one parent most of the time and visit the other one regularly.
- **Sole custody** occurs when the child lives with one parent (the *custodial parent*) who has been given the main responsibility for making important decisions about the child's life. The other parent (the *noncustodial parent*) is usually given visitation rights unless the court limits them due to possible harm to the child. In this case the noncustodial parent may be allowed to see the child if a third party is present. On the other hand, the court may deny visitation rights to the noncustodial parent completely.

If a petition is made to the court asking for custody of a child, the court will look at a number of factors:

- **The tender years doctrine:** Traditionally children were usually placed with the mother as the courts felt that mothers were more inclined to give proper care rather than just affection. Today, however, when parents tend to share the child-raising duties more, things have changed. Now the courts take into account both spouses' parenting abilities. The parent who seems likely to provide the better care is usually awarded custody.
- **The child's preference:** The court generally considers the wishes of the child before deciding who gets custody, especially in the case of an older child like a teenager. However, a judge has the authority to go against those wishes if to do so seems to be in the best interests of the child.



- **The separation of siblings:** Courts generally try to keep siblings (brothers and sisters) together unless it seems to be in their best interests to separate them.
- **The stability of the environment:** The courts will consider the home and its environment that each parent has to offer; preference will be given to the parent who can provide the child with a stable, secure environment.
- **Other factors:** Finally, things like the parents' sexual orientation and religion, along with the rights of third parties (grandparents, for instance) are other factors the courts weigh when determining who will be given custody of a child.

Above all, in custody disputes the judge's main concern will always be what's in the best interests of the child. Often the court will appoint a special officer to investigate both parents' situations and represent the child's best interests in court by making recommendations to the judge concerning custody.

A judge who has to award custody of a child or children isn't usually in a position to be envied. In fact, this can be a very difficult decision to make, with many factors to be considered. And considering the profound impact the decision will have on the lives of several people, all these factors must be weighed carefully.

3. a. Many people still feel that, all other things being equal, mothers rather than fathers should be given custody of young children. Explain your thoughts on this question. If you have a study partner, take sides and debate the issue.
- b. Do you believe that considerations such as the parents' religious views or sexual orientation should be considered at all in deciding custody cases? Explain why or why not.



Compare your answers with those in the Appendix, Section 5: Activity 3.

Access

access: *the right of a noncustodial parent to visit a child and inquire about important issues in his or her life*

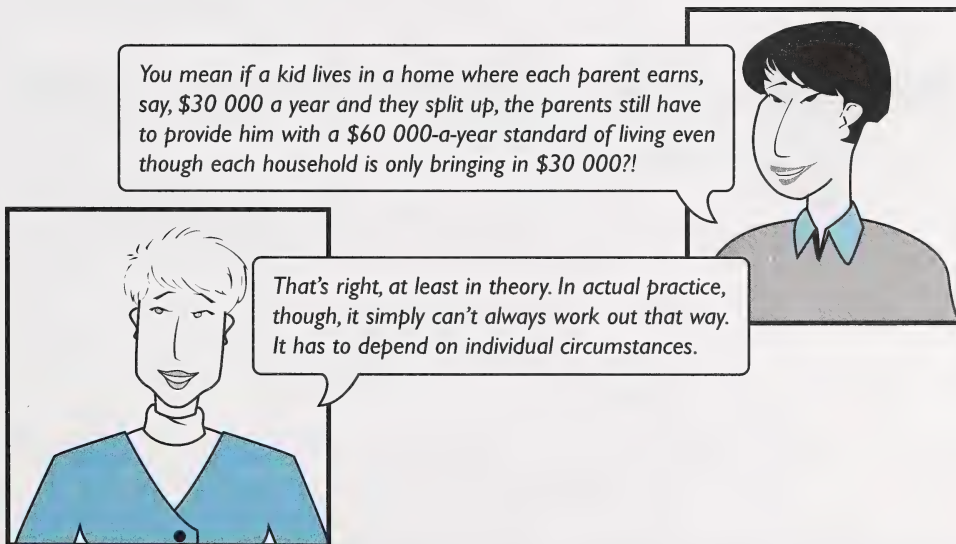
In legal terms **access** is the right of a noncustodial parent to visit a child at reasonable intervals. As mentioned earlier, access rights can be determined in a separation agreement drawn up by the parents (with a lawyer's help) or by the courts.

Access privileges may be decided by weighing the strength of the relationship between the child and the noncustodial parent as well as the distance they live from each other. Courts always regard it as very important for a child to have meaningful relationships with both parents if this is at all possible; therefore, unless there's a strong reason not to, they usually award generous access rights.



Maintenance

Maintenance, or child support, is a prime legal obligation of the parents during a separation and divorce. The objective is for children to be maintained at the same standard of living as before the breakdown of the marriage.

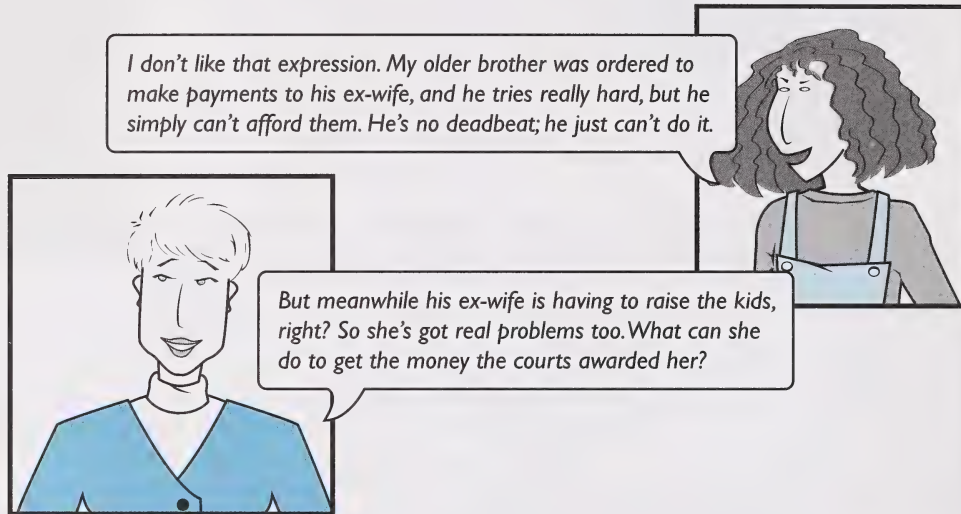


The question always is, of course, how much will each parent contribute? The following guideline is usually used by the courts to make this determination:

- The amount of money necessary to support the child's needs is decided.

- This amount is divided in proportion to the parents' respective incomes.
- An order is made for the noncustodial parent to pay his or her share to the custodial parent.

A problem sometimes arises for the custodial parent once the noncustodial one has been ordered to make monthly support payments. The problem is that many people simply don't make the payments, or they don't make them as often as they should. Noncustodial parents who fail to make their payments are sometimes referred to as "deadbeat dads" because most of the time it's the fathers who are ordered to make payments to the mothers. Of course this isn't always the case, and "deadbeat mums" exist too.



Custodial parents who are having problems getting their hands on the maintenance payments due them really have two choices:

- They can bring a legal action in the courts for money owing them. If the action is successful, the judge may make an order allowing the custodial parent to seize the other's goods or garnishee his or her wages or bank account.
- They can rely on the Maintenance Enforcement Program of Alberta. This program is free, and once a person has registered, the Director of Maintenance Enforcement is responsible for collecting the money owing and passing it on to the custodial parent. For most people, registering with this program happens automatically as soon as a court grants them a maintenance order. For orders made before 1987, however, the custodial parent has to register his or her claim before the Director can assume responsibility. The Director of Maintenance Enforcement can collect arrears in payments of up to ten years.

Establishing and enforcing child maintenance programs across the country is something that many people think needs a bit of improving. While this module was being written a bill was being debated in parliament that would amend the *Divorce Act* so as to make it harder for noncustodial parents anywhere in Canada to avoid making maintenance payments. The bill also would establish strict guidelines for determining the amount of maintenance to be paid by noncustodial parents. According to this bill, the income of the custodial parent would no longer be considered in determining payment levels. By the time you're doing this module, this bill may be in effect, but at the time of writing it wasn't yet the law.



4. The Maintenance Enforcement Program has made a great difference in the ability of custodial parents to collect child maintenance owing them from their ex-spouses. Why would this program make so much difference?

Compare your answer with the one in the Appendix, Section 5:Activity 3.

In this activity you've had an overview of some of the issues that have to be settled with most divorces, property distribution, child custody, access rights, and maintenance payments. By this point you should be able to see just how complicated divorce proceedings can sometimes become.

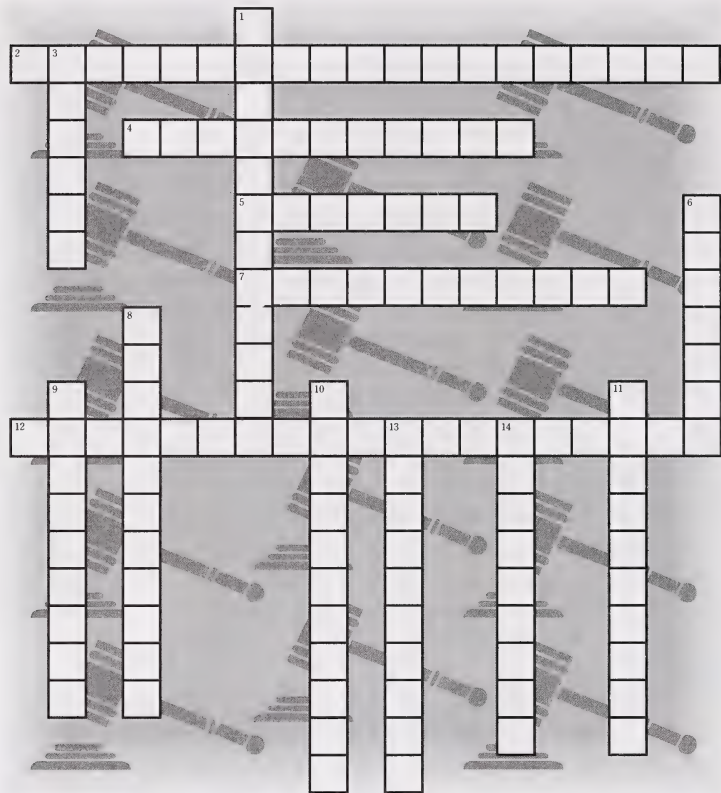
FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you to the Enrichment.



Extra Help

You've been working with a number of legal terms in this module. Test your knowledge of them by completing the crossword puzzle that follows.



Across

2. This act sets out specific guidelines with regard to the division of property when a marriage breaks down.
4. This is another name for *child support*.
5. This means the care of a child is entrusted by the courts to a parent in a divorce settlement.
7. This occurs when one parent is given chief responsibility of making decisions in a child's life.
12. According to this principal, custody of children was traditionally given to the mother because of her perceived parenting skills.

Down

1. This occurs when parents share the responsibility for important decisions in their child's life.

3. This is the right of a noncustodial parent to visit with a child at regular intervals.
6. This legally ends a marriage.
8. This bar to divorce involves one spouse giving approval to the behaviour of the other spouse that would otherwise be grounds for divorce.
9. This occurs when one spouse leaves the other with no intention of returning.
10. _____ property is usually shared equally by the spouses in a divorce settlement.
11. _____ rights may be given a noncustodial parent so that he or she can spend time with a child.
13. This is recognized as legal as soon as two spouses stop living together with no intention of getting back together.
14. This bar to divorce occurs when spouses wanting a divorce agree to deceive the court.

Compare your answers with those in the Appendix, Section 5: Extra Help.



Do **one** or **more** of the following.

1. The following article appeared on *The Edmonton Journal's* Internet website in February 1996. Read it and then answer the questions that follow.

Husband's Divorce Lawsuit Accuses Wife of On-line Adultery

SOMERVILLE, N.J. (AP) – A man filing for divorce accused his wife of carrying on a “virtual” affair via computer with a cybersex partner who called himself “The Weasel.”

Diane Goydan's relationship with the man apparently never was consummated, but her husband, John Goydan of Bridgewater, N.J., claimed the pair had planned a real tryst this weekend at a New Hampshire bed and breakfast.

On Jan. 23, Goydan filed divorce papers that included dozens of e-mail exchanges—some sexually explicit—between his wife and a married man she met on America Online. The man, whose on-line name was The Weasel, was identified in court papers only as Ray from North Carolina.

In a Nov. 23 message, The Weasel wrote: “I gotta tell you that I am one happy guy now and so much at peace again anticipating us. I love you dearly. XXOOXX.”

Goydan is now seeking custody of the couple's two children, ages three and seven.

Goydan's lawyer, Richard Hurley, said Diane Goydan apparently believed the e-mail messages could not be retrieved, but her husband was able to pull them off the computer and store them on a disk.

Goydan began saving his wife's e-mail every day after surprising her as she was printing out something on the computer when he came home from work early.

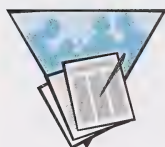
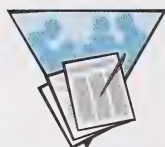
When Goydan later switched on the computer, it told him there was something waiting to be printed, and he discovered a message to his wife from The Weasel. The lawsuit claims Diane Goydan promised that day to end the relationship but later that night sent The Weasel a message that they had been caught.

Weeks later, she messaged: “I just have to learn to be more careful... I want so badly to be with you that I am willing to chance it.”

Reached by telephone at home Wednesday, Diane Goydan said, “You're kidding me,” and hung up.¹

- a. Explain the legal issue here.
- b. Would you consider what's gone on here to constitute a breakdown of marriage? Explain your answer.

¹ “Husband's Divorce Lawsuit Accuses Wife of On-line Adultery,” *The Edmonton Journal*, 2 February 1996, <<http://www.southam.com/edmontonjournal/archives/0202in1.htm>> (28 February 1997). Reprinted by permission of the Associated Press.



2. Pick **one** of the two statements that follow and write a short position paper in which you take a stand either for or against it. If you have a study partner, debate the issue either formally or informally.
 - A parent's sexual orientation should be a factor in deciding custody cases.
 - The easiest way to curb the rising divorce rate is to make it much harder to get married.
3. The division of property and spousal support after divorce are issues very much in the news these days. Do some research into recent court judgments on **one** of these matters and prepare a one-page report on trends and concerns surrounding it.



To do your research, use your school or local library (ask the librarian for help) as well as your resource centre. And don't neglect CD-ROMs and the Internet. Here are a few Internet sites that might get you started, but remember, these addresses can change.

- Supreme Court of Canada—http://lazio.crdp.umontreal.ca/Druit/CSC/index_eng.html
- Canadian Law Resources on the Internet—http://mindlink.net/drew_jackson/mdj.html
- Access to Justice Network—<http://www.acjnet.org>
- Legal Education Society of Alberta—<http://www.law.ualberta.ca/lesa/>

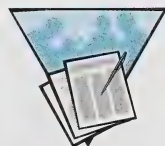
Task Management



Teamwork



Communication



4. As mentioned in Activity 3, while this module was being written *Bill C-41* to amend the *Divorce Act* was being debated in Parliament. This bill will almost certainly have been passed and made law by the time you're doing this module, and it will have made significant changes to the child-support system currently in effect.

If you're interested in learning what changes will be involved, do some research into the matter and see what you can learn. Newspapers and news magazines should provide you with a good deal of information (the bill is scheduled to become law on May 1, 1997), and your librarian will be able to help you find relevant material. Take a position for or against the changes and either debate the matter with a study partner or write a short position paper.

5. If you can get hold of a copy, watch the fifteen-minute videotape *Divorce*, part of the series *You and the Law* produced by ACCESS and the Alberta Law Foundation. This short film explains the basics of obtaining a divorce in Canada.
6. Another, longer, videotape you might wish to watch is *Family after Family*, part of the TVONTARIO series *A Question of Justice*. This film covers situations related to family law that have been touched upon in Sections 3, 4, and 5. It's an excellent film, and one that should get you thinking. Remember, however, that there are some differences between laws in Ontario and Alberta.
7. Once again you can learn about divorce-related legal issues by calling Dial-A-Law (see Section 1: Enrichment). Programs to listen to are

- 111 *Requirements for Divorce*
- 112 *Divorce Procedure*
- 113 *Matrimonial Property*
- 115 *Separation*
- 116 *Rights and Duties of Parents*
- 117 *Divorce Mediation*
- 118 *Uncontested Divorce*
- 131 *Custody and Access*
- 132 *Maintenance Orders*
- 133 *Enforcing Maintenance*

As well, contact Student Legal Services of Edmonton for relevant pamphlets from their series *A Guide to the Law Regarding...* (see Section 2: Enrichment).

Compare your answers with those in the Appendix, Section 5: Enrichment.

CONCLUSION



In this section you've looked at the legislation that governs parties who are going through a legal separation or divorce. You've also examined the procedures involved in obtaining a judicial separation and a divorce. Finally, you've examined the rights and responsibilities of the parties involved in a divorce after the settlement has taken place.

This section began with a brief look at a couple—Tabitha and Mitch—who were considering separating. Now that you've completed this module, you should be in a better position to understand the legal complexities involved in situations of this sort.

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 5.



Preparing Your Will



PHOTO SEARCH LTD.

HAVE you made out your will? If you're a typical high school student, it's extremely unlikely that you have. In fact, you probably think the question's ridiculous. Unfortunately, however, many people continue to put off thinking about a will as they grow older, and the results, as you'll see in this section, can be catastrophic.

In this section you'll learn why it's so important to have a will. When you're finished, you should be able to discuss laws related to wills and estates, identify the two types of wills valid in Alberta, and explain the legal requirements for preparing a will.

SECTION 6

Why Have a Will?

The Importance of Having a Will



PHOTO SEARCH LTD.

Think about the scenario that follows.

Mr. and Mrs. Ouellet were involved in a serious car accident while driving from Edmonton to Red Deer. Mrs. Ouellet was pronounced dead at the scene of the crash while her husband died four hours later in hospital.

Mrs. Ouellet had two adult children from a previous marriage. Mr. Ouellet, who was much older than his wife and expected to die long before she did, had intended to leave his entire **estate** to her. Mrs. Ouellet had planned to divide her estate, which would, she thought, eventually include both her own property and the property she'd inherit from her husband, between her children when she died.

▼
estate: the entire collection of assets a person owns at death

will: a legal document drawn up by a person and specifying how that person's property is to be distributed after death
▲

Mr. Ouellet, it should be noted, did have one adult daughter, also from a previous marriage. She had a lengthy criminal record and quickly spent any money she got on drugs and gambling. Mr. Ouellet had no intention of leaving her anything when he died; he preferred his property someday passing into the hands of his wife's children. Unfortunately, however, neither of the Ouellets had made a **will**.

Here's what happened. Because Mrs. Ouellet died before her husband, according to the laws of Alberta the bulk of her modest estate went automatically to him. When Mr. Ouellet died four hours later, his entire estate, now including what he'd inherited from his wife, went to his ne'er-do-well daughter. Mrs. Ouellet's children ended up with almost nothing.

All this could have been avoided if the Ouellets had had wills drawn up; but, like so many people, they just hadn't got around to doing it. Mrs. Ouellet's children had good reason to resent their mother's carelessness, don't you think?



1. Even though it's so very important to draw up wills in order to ensure that your estate goes to the people you want it to when you die, the fact is that many people somehow never get the job done. Suggest reasons why this is so.

Compare your answer with the one in the Appendix, Section 6:Activity 1.

The scenario at the beginning of this activity points out the importance of having a properly prepared will. This is something most people don't like to think about because it reminds them that someday they'll die; however, unless they really don't care about what happens to their money and property and about the well-being of their families and other people close to them, it's very important that they draw up a will early in life. After all, the simple reality is that anyone can die at any time without any warning whatsoever.

There are several reasons why people should draw up wills. Here are three of them:

- A will allows people to determine exactly how their property will be distributed and in what amounts.
 - A will allows people to provide for the continued well-being of their families and protects them from uncontrolled or unnecessary losses.
 - A will offers peace of mind. It can be very comforting to know that the people you love will be looked after as you see fit after your death.
2. Can you think of any other advantages to having a will? Suggest as many as you can.

Compare your answer with the one in the Appendix, Section 6:Activity 1.

Dying Without a Will

intestate:

without a will at death; also a person who dies without a will

People who die without wills are said to die **intestate**. Each province in Canada has passed legislation that stipulates what happens to the estates of people in this situation. In Alberta, the law governing intestate deaths is the *Intestate Succession Act*.



administrator: a

male person appointed to administer an intestate estate

Upon the death of an intestate, someone, most often a family member, usually applies to the courts to be named as **administrator** (or **administratrix**) of the estate; if no one applies, the courts will appoint a government official known as a public trustee to do the same job. What this person has to do is distribute the assets in the deceased's estate according to the law.

administratrix: a

female person appointed to administer an intestate estate

The *Intestate Succession Act* dictates how the administrator will divide the intestate's estate. The people who drew up this act tried to see to it that estates are divided fairly and in a way that would likely reflect the deceased person's wishes, but of course only the deceased person would have known precisely how he or she wanted things divided.

lineal

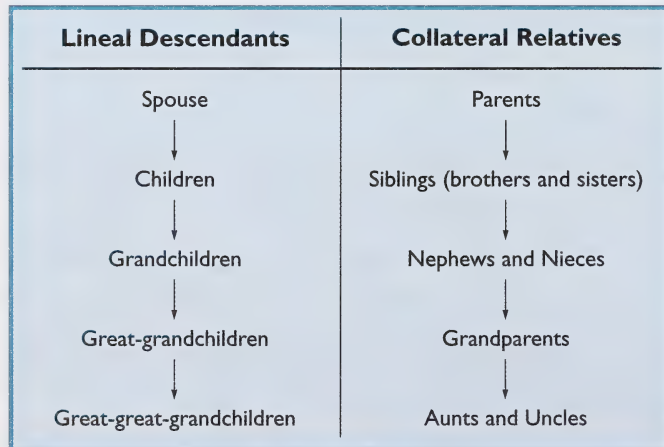
descendants: *the spouse, children, grandchildren, and so on of a deceased*

Alberta's *Intestate Succession Act* specifies that, first of all, the estate of an intestate must be used to pay any expenses and debts. Money left over is distributed as follows: First, it goes to what are called **lineal descendants**. These are the surviving spouse and any children of the deceased, followed by the children's children, and so on. If there are no spouse and direct descendants, the estate is distributed among the deceased's **collateral relatives**. The chart that follows illustrates this.

collateral

relatives:

relatives of a deceased other than lineal descendants



3. Use the numbers 1 to 5 to indicate the order in which the following people would inherit from the estate of an intestate.
- a. a nephew
 - b. a daughter
 - c. an aunt
 - d. a mother
 - e. a husband

Compare your answers with those in the Appendix, Section 6: Activity 1.

Now here's a closer look at how estates are divided up according to the *Intestate Succession Act*.

If the intestate was married and only a spouse survives, the spouse will receive all of the estate.

If the intestate was married and a spouse and child survive, this rule applies: If the **net value** of the estate is less than \$40 000, the spouse inherits the whole estate. If the net value of the estate is more than \$40 000, the spouse gets the first \$40 000 and the rest is divided equally between the spouse and child.

net value: the value of the assets minus any debts

Here's an example:

Estate Worth \$100 000		Total Distribution
First \$40 000 to spouse	One-half of remainder to spouse – \$30 000	
	One-half of remainder to child – \$30 000	Spouse – \$70 000 Child – \$30 000

If the intestate was married and a spouse and more than one child survive, this rule applies: The spouse receives the first \$40 000 plus one-third of the remaining estate. The other two-thirds is divided equally among the children.

Here's an example:

Estate Valued at \$100 000		Total Distribution
First \$40 000 to spouse	Spouse receives one-third – \$20 000	
	Child #1 receives one-third – \$20 000	Spouse – \$60 000 Child #1 – \$20 000 Child #2 – \$20 000
	Child #2 receives one-third – \$20 000	

When there are more than two children, the children will split the remaining two-thirds.

Here's an example:

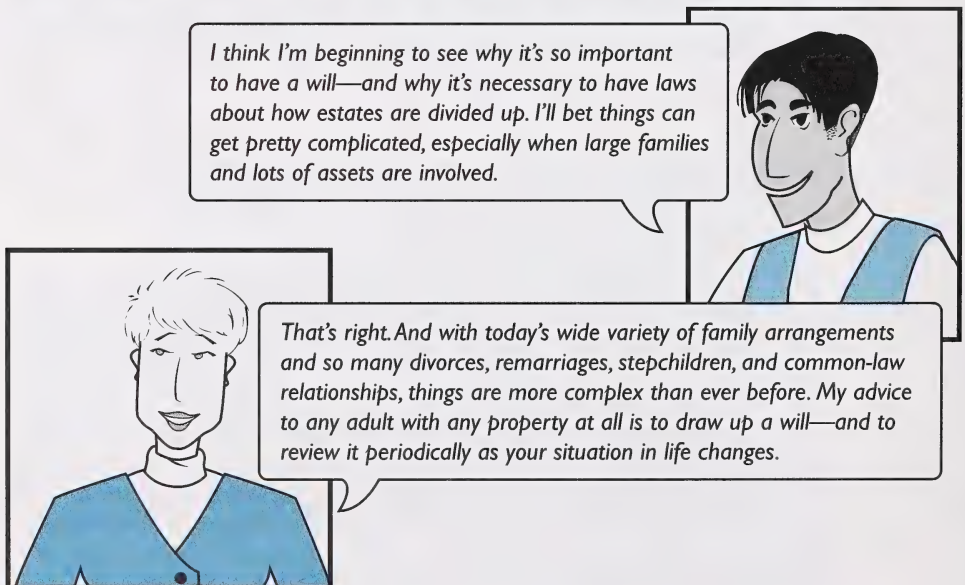
Estate Valued at \$100 000			Total Distribution
First \$40 000 to spouse	Spouse receives one-third – \$20 000		
	\$10 000	\$10 000	
	\$10 000	\$10 000	

Spouse – \$60 000
Child #1 – \$10 000
Child #2 – \$10 000
Child #3 – \$10 000
Child #4 – \$10 000

If a child of the deceased has died, the spouse of that child and their children will inherit. An example would be that if Child #3 in the preceding chart had died and left a spouse and two children, that spouse and the children would receive the \$10 000.

4. Ms. Kinderchuk died, leaving an estate worth \$70 000. She was survived by a husband and three children—Lorraine, Jasmine, and Marcel. How much (to the nearest dollar) would each of these family members stand to inherit?

Compare your answer with the one in the Appendix, Section 6: Activity 1.



In this activity you've looked at the importance of making a will and the need for legislation governing wills and estates. In the next activity you'll examine more closely the matter of just how a valid will is created.

ACTIVITY 2

Is Your Will Valid?



Mr. Wiemer, being a conscientious husband and father, decides to write up a will to ensure that his family is properly looked after when he dies. To save some money, he decides to do it himself. He turns on his computer, composes his will, prints it off, initials it, and puts it into a desk drawer.

Mrs. da Gama also decides to write a will and, like Mr. Wiemer, she decides to do it herself. In her will she leaves everything to her son—but only on the condition that he divorces his wife, with whom Mrs. da Gama has never got along.

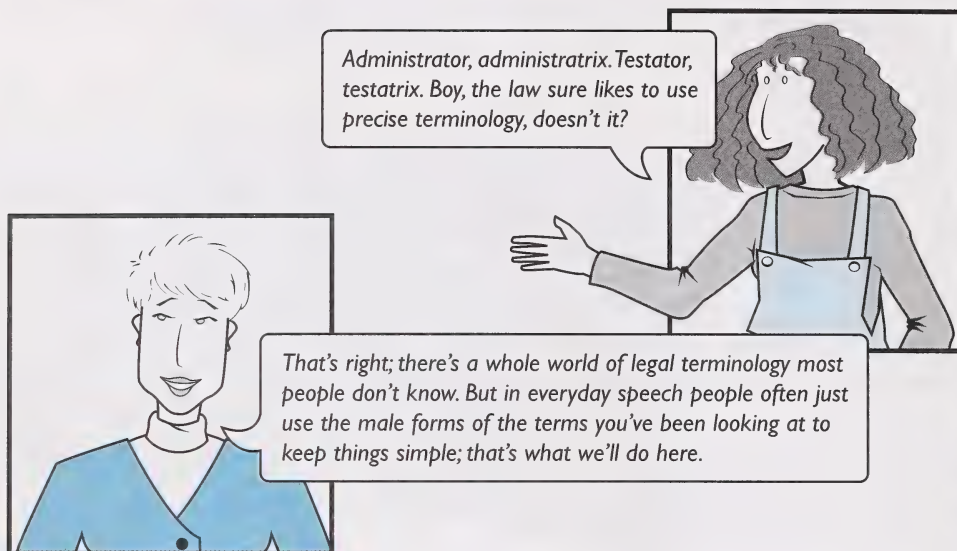
Mr. Thompson's elderly father has Alzheimer's disease and is no longer in control of his mental faculties. Having looked after his father throughout his illness, Mr. Thompson feels he deserves to inherit the entire estate. He writes up a will to this effect and forces his reluctant father to sign it.

Miss Mueller has a will drawn up by a lawyer. In her will she leaves everything she has to her two sisters. To ensure that they know that she's named them to be her heirs, Miss Mueller has her sisters sign her will as the two witnesses required by the law.

Do you see anything wrong with these four scenarios? The fact is that in each case there will be serious legal problems when the **testator** (or **testatrix**) dies. As you work through this section, you'll discover why.

▼
testator: a male person who draws up his will

▲
testatrix: a female person who draws up her will



Types of Wills

In Alberta, the *Wills Act* governs just what does and what doesn't constitute a legal will. In this province two types of wills are regarded as legal:

- the formal (or solemn) will
- the **holograph will**

A formal will

- is usually, but not always, drawn up by a lawyer
- must be signed by the testator in the presence of two witnesses
- must contain a statement to the effect that the testator was of sound mind and body at the time of signing

A holograph will

- must be written **entirely** in the testator's own handwriting
- must be signed by the testator
- requires no witnesses

Not all provinces recognize holograph wills as being legal; Alberta does, though there must be proof that the handwriting and the signature are, indeed, the testator's. Often testators who prepare their own wills fail to understand the complexities of distributing an estate; the result can be a great deal of confusion and often a lengthy and expensive court case to determine just how the estate should be dealt with.

holograph will:
a will written
entirely in the
testator's own
hand

1. Given the problems that can be created by people drawing up their own wills, suggest a reason why provinces like Alberta recognize holograph wills as legal.
2. Mr. Chan decides to write his own will. He gets hold of a computer program designed to help with this process and fills in the blanks. He prints the will off, signs it with no witnesses, and files it away, content that the courts will recognize it as a legitimate holograph will. Will the courts actually do this? Explain your answer.

Compare your answers with those in the Appendix, Section 6: Activity 2.

Legal Requirements of a Will

- Is a will written by a minor valid?
- What happens if an elderly person suffering from dementia (a severe deterioration of mental abilities) revokes (takes back) an older will and leaves everything to her budgie instead of her disabled son?
- Is a will valid if an adult child writes it up and bullies and threatens an aging parent into signing it?

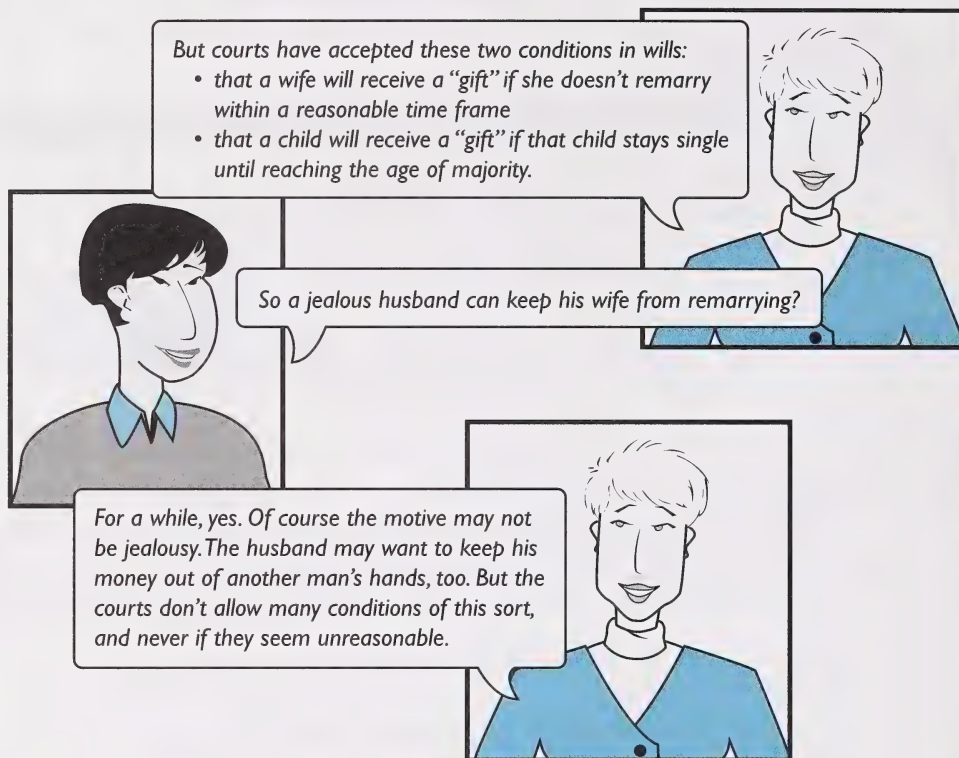
In all three of the preceding cases listed above the courts would likely rule the wills to be invalid. To be a legally valid document, a will must meet certain standards. In Alberta, the chief requirements of a legal will are as follows:

- Testators must be of legal age unless they're
 - married
 - members of the Canadian Armed Forces
 - sailors at sea
 - Testators must be of sound mind. They must know and understand what they're doing.
 - Testators must not be under any undue influence or duress. They have to be actively involved in writing their wills, and they must make their own decisions about who will inherit what.
 - The witnesses to wills and their spouses can't benefit from the wills.
3. Suggest a reason for allowing members of the armed forces and sailors at sea to make wills regardless of their ages (and without other formalities normally required).



Compare your answer with the one in the Appendix, Section 6: Activity 2.

As well as the requirements presented in the foregoing, a testator can't include in a will any conditions that are against the law. Likewise, no conditions that are cruel, immoral, or unreasonably severe are allowed. One rather popular clause that's also invalid is to stipulate that your child will inherit only if he or she divorces or marries a certain person.



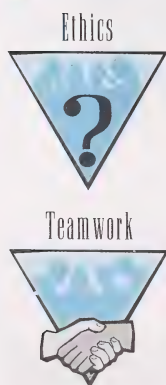
bequest: a gift made in a will to a beneficiary

beneficiary: a person named to receive a benefit; for example, a bequest under the terms of a will

4. Why do you suppose the courts are so reluctant to allow “unreasonable” conditions in a will?
5. Many testators figure that since it’s their money they’re leaving to other people, they should be able to put conditions on their **bequests**. After all, **beneficiaries** still have a choice; they can either accept the money and meet the condition or they can simply refuse the money.

What are your views on this question? If you’re working with a study partner, compare your ideas.

Compare your answers with those in the Appendix, Section 6: Activity 2.



The Executor, Trustee, and Guardian

You'll remember from Activity 1 that if a person dies intestate the courts will appoint an administrator to look after the estate. When a testator draws up a will, he or she normally names someone in the will to do this same job—often a family member or trusted friend. This person is known as an **executor** if male and (you guessed it) an **executrix** if female. When a testator dies, the executor has a good deal of work to do. Among the tasks to be done, he or she must

- obtain formal proof of the testator's death
- pay any debts, taxes, and expenses owed by the estate
- notify any beneficiaries named in the will and dispose of the estate's assets according to instructions.

Sometimes part of an estate is to be held in trust for a period of time. This usually occurs when one or more of the beneficiaries are minors. In a case like this a testator should name a **trustee** (no, there's no such thing as a trustrix) in the will to look after the money until the beneficiaries have reached the stipulated age. A trustee can be the same person as the executor. Trustees are required to

- hold the legal titles of properties for others
- represent the interests of the beneficiaries

Finally, if a testator has children under the age of majority, they should appoint a guardian to look after them. This is often the same person as the trustee. Becoming a guardian for a child is a tremendous responsibility, and testators should talk this matter over thoroughly with whoever they wish to appoint.

6. If one member of a married couple dies, the survivor naturally still normally retains full responsibility for any children. Why, then, should married people still appoint a guardian in their wills?



▼
executor: a male person appointed by a testator or testatrix to carry out the terms of his or her will

executrix: a female person appointed by a testator or testatrix to carry out the terms of his or her will

▲
trustee: a person appointed to hold part of an estate in trust until the beneficiary can take it over

7. Now that you know something about wills, go back to the beginning of this activity and reread the four scenarios presented there. Explain the legal problems involved in each situation.
8. Before finishing up this activity, take a look at the formal will that follows. It's an example of a will drawn up by a testator with a simple estate. The will has been marked off into six sections—A through E. Match these sections with the following parts of a will

- bequests
- declaration of who is making the will
- appointment of guardian for the children
- cancellation of previous wills
- signature and witnesses
- appointment of executor



Last Will and Testament


- A** { THIS IS THE LAST WILL AND TESTAMENT of me, DONALD R. BROWN, of the City of Edmonton, in the Province of Alberta, Teacher.
- B** { I HEREBY REVOKE all former wills, dispositions or other testamentary documents and declare this to be and contain my last will and testament.
- C** { I HEREBY APPOINT my wife, Renée L. Brown, of the City of Edmonton, in the Province of Alberta, as the sole executrix of this my will. In the event that the said Renée L. Brown should be unable or unwilling to act as my executrix, I then appoint my brother, Frederick L. Brown, of the City of Calgary, in the Province of Alberta, as the executor of this my will.
- I HEREBY DIRECT that all my just debts, funeral and other testamentary expenses be paid as soon as possible after the date of my death.
- D** { I HEREBY APPOINT my wife, Renée L. Brown, as the guardian of and the trustee for all of my infant children alive at the date of my death. Should my said wife, Renée L. Brown predecease me or die within thirty (30) days of my death, I then appoint my brother, Frederick L. Brown, as the guardian of and the trustee for my infant children alive at the date of my death.


E { I DEVISE AND BEQUEATH my estate both real and personal, of which I am possessed at the date of my death to my wife, Renée L. Brown. Should the said Renée L. Brown predecease me or die within thirty (30) days of my death, I devise and bequeath my estate both real and personal of which I am possessed at the date of my death to my guardian and trustee, Frederick L. Brown, to be disposed of as follows:

to divide the proceeds of my estate equally among my children alive at the date of my death. Should any of my said children be under the age of twenty one (21) years at the date of my death, I direct that my trustee provide for the maintenance, education, advancement and support of each of my infant children until the youngest of my said children attains the age of twenty one (21) years, at which time the balance of the estate shall be divided equally among my said children.

{ IN WITNESS WHEREOF, I, the said DONALD R. BROWN, Testator, have to this my last will and testament, set my hand and seal this *12th* day of *February*, A.D. 19 *97*.

F { SIGNED, SEALED AND DELIVERED,)
in the presence of us, both present at the)
same time, who in the presence of) *Donald R Brown*
Donald R. Brown, and in the presence of)
each other, have hereunto affixed our)
names as witnesses.)


Marcel Dupuis
118 - 17 B Avenue
Everytown, Alberta
Accountant


Marcia Turpin
2201 - 116 Street
Everytown, Alberta
Surveyor

Compare your answers with those in the Appendix, Section 6: Activity 2.

Now you have a pretty good idea of the types of wills that are legal in Alberta and the sorts of clauses they can contain. However, there are still a few more restrictions put upon wills; it's these you'll look at in Activity 3.

A practical tip: If you remarry, your old will automatically becomes invalid and you should make a new one dated after the marriage. If you don't, when you die you'll be considered to have died intestate.

ACTIVITY 3

Legislation Governing Wills



Lise Vandenberg is married and has two children. Her husband, Kurt, hasn't worked in years, leaving it up to Lise to support the family herself. Kurt maintains he can't work because of a nervous condition, but for a long time Lise has suspected that laziness has more to do with the situation than a disability.

Learning that she has a terminal disease, Lise draws up a will, correctly written, signed, and witnessed. In her will she leaves her entire estate to her two children and nothing to Kurt. When she dies, Kurt, enraged, consults his lawyer to discover if he can get access to any of his wife's estate.

Ethics



Teamwork



1. Before going on, what do you think would be the just resolution to this situation? Should Kurt inherit, or should Lise's final wishes be honoured? Explain your reasons. If you have a study partner, take sides and debate the issue.

Compare your answer with the one in the Appendix, Section 6: Activity 3.

Were you at all surprised by the suggested answer to question 1? The fact is that while for the most part people are allowed to dispose of their estates as they see fit, there are laws that override testators' wishes in certain situations. Two of those laws in Alberta are the *Family Relief Act* and the *Dower Act*. In what follows you'll look at each of these briefly.

The Family Relief Act

When testators don't make provisions for the care of all those people who have reasons to be dependent on them—such as spouses, children, or siblings if they were supporting them at the time of their deaths—the dependants may appeal to the court to have the wills changed.

If the court is provided with proof for the claim, it will usually make a fair award. Any children who were adopted or are illegitimate and can prove paternity will have the same rights as natural children born in wedlock.

The *Family Relief Act* gives a judge the power to decide if dependants have been adequately provided for. In order to establish a claim under this act, you must be able to prove that you were financially dependent on the deceased at the time of his or her death. You must be in one of the following categories to qualify:



- a spouse who was financially dependent
- a minor dependant
- a person over the age of eighteen but still dependent because of full-time attendance at school
- a person who is dependent due to a mental and/or physical disability

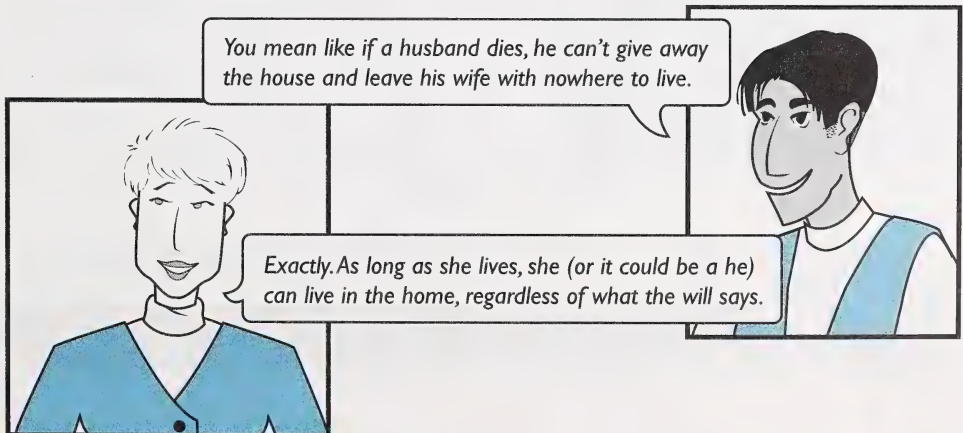
Common-law spouses, especially if they've been living with their partners for a long time, can sometimes make successful claims under the *Family Relief Act*. Children born in common-law relationships can also make claims, as can adopted children.

2. a. Can you think of a legitimate reason why a testator might wish to exclude a dependant from his or her will? If so, explain it.
- b. If you, as a testator, had a legitimate reason to exclude someone in this way, what would you do to increase the likelihood that the courts would agree with your position?

Compare your answers with those in the Appendix, Section 6: Activity 3.

The Dower Act

While the *Family Relief Act* protects the rights of dependants to partake in an estate to which they're entitled, the *Dower Act* protects the right of a spouse to remain in a family home upon the death of the other spouse.



A spouse can give up his or her rights under the *Dower Act*. Sometimes a will asks a surviving spouse to do this in return for a benefit of another sort, but this can become tricky, and it should be worked out carefully with a lawyer.

▼
joint tenants:
*people who are
together the legal
owners of a
property*
▲

One thing you should note is that some property is owned jointly; this is often the case with a family home, where both spouses are legally **joint tenants**. When this is the case and one spouse dies, the other one automatically becomes sole owner of the property. This means, of course, that you can't will something you own jointly to anyone else.



3. Mr. Schreiber has lived with his wife in a family home for many years, but his wife, who had inherited the property from her parents, is the sole legal owner. When Mrs. Schreiber dies, she leaves the property to her sister, and Mr. Schreiber is concerned that he'll be without a place to live.

Should Mr. Schreiber be concerned? Explain your answer.

4. Mr. Pietersma owns a residence jointly with his brother, but he has lived there with his wife for many years.
- Explain how this situation presents a problem in view of the *Dower Act* and the law on joint tenancy.
 - How would you want to see this situation resolved? Give your reasons.

Ethics



Compare your answers with those in the Appendix, Section 6: Activity 3.

The Survivorship Act

Think back to the situation described at the beginning of Activity 1 of this section—the one involving Mr. and Mrs. Ouellet. It involved a husband and wife who both died in a car crash and the problems that resulted because neither of them had a will. The fact is that even if a couple have wills, this sort of situation can cause problems. Examine this scenario:

In his will Mr. Lindstrom leaves his entire estate to his wife (who is younger than he is) or, if she dies first, to their daughter. In her will, by contrast, Mrs. Lindstrom leaves her estate to a son from a former marriage. Mr. and Mrs. Lindstrom are both killed in a car accident, but there's some question over which one died first.

5. a. If Mr. Lindstrom were the first to die, explain which child would end up with the combined estates.
- b. Now explain which child or children would get the combined estates if Mrs. Lindstrom were the first to die.

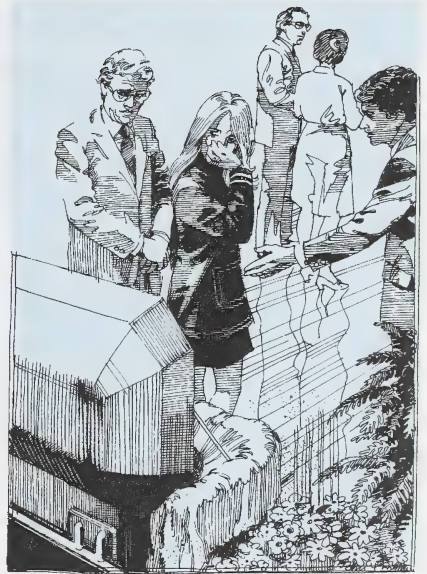
Compare your answers with those in the Appendix, Section 6:Activity 3.

Do you see how careful testators have to be? And of course sometimes in the case of a mutual accident, it's impossible to say who died first. This is where the *Survivorship Act* helps out. According to this Alberta statute, if two or more people die at the same time or in such a way that it can't be determined who died first, it's presumed that the older one was the first to go.

The *Survivorship Act* does allow testators to make special provisions for their estates if they and their spouses die in mutual accidents, and these provisions will override the act. Another common way of dealing with this sort of situation is for testators to put into their wills a statement as to how the estate is to be disposed of if the spouse doesn't survive the deceased by at least thirty days.

6. In view of the *Survivorship Act*, explain who will end up with the Lindstroms' estate if the couple should die at the same moment.

Compare your answer with the one in the Appendix, Section 6:Activity 3.



And those, along with the *Wills Act*, and the *Intestate Succession Act* are the main pieces of legislation governing wills and estates in Alberta. The purpose of legislation of this sort is to achieve fairness for dependants and simplification in dealing with the matter of wills and estates. For the most part, however, testators can dispose of their assets as they see fit—as long as they make absolutely clear precisely what their wishes are.

FOLLOW-UP ACTIVITIES

If you had difficulties understanding the concepts in the activities, it's recommended that you do the Extra Help. If you have a clear understanding of the concepts, it's recommended that you to the Enrichment.



Extra Help

In Alberta there are two types of legally valid wills:

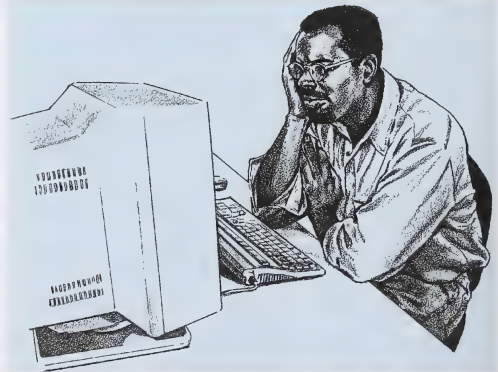
- the formal or solemn will
- the holograph will

A solemn will is a formal legal document that's usually drawn up by a lawyer who uses formats and terminology that the courts understand. A will of this sort must be signed by a testator in the presence of two witnesses who don't stand to inherit from the will.

By contrast, a holograph will is a less formal document that needn't be witnessed. It must, however, be written entirely in the testator's hand and signed.

1. Kareem decides to write a will. He gets some books to learn how to do this correctly, types his will up on his computer, gets two witnesses to testify the validity of his signature, signs the document and files it away in his desk.

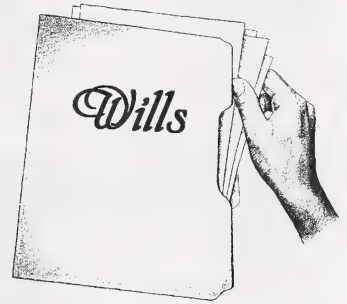
Are the courts likely to recognize this will as valid? Explain your answer.



Compare your answer with the one in the Appendix, Section 6: Extra Help.

Dying without a will (dying intestate) can present tremendous legal headaches for your heirs. What's more, much, if not all, of the money you'd wanted them to inherit can often be spent on legal fees and court costs. In Alberta, the *Intestate Succession Act* stipulates how the estates of intestates will be distributed.

2. Mrs. Melnychuk dies without a will. Her estate is valued at \$40 000 after expenses have been paid. Mrs. Melnychuk's husband is dead, but she has two living children and four grandchildren. Explain who will inherit from Mrs. Melnychuk and how much they'll receive.
3. Following is a list of statements about wills and estates. Determine whether each one is true or false.
- The provisions of a will take effect as soon as it is signed and dated.
 - The usual form of a will is a holograph will.
 - Witnesses are required to sign a holograph will.
 - A will can contain the condition that a child will inherit only if that child marries a certain individual.
 - A witness to a will cannot also be a beneficiary.
 - A testator must always be of legal age.
 - Holograph wills are recognized in all provinces.
 - The trustee and executor of a will can be the same person.
 - The *Survivorship Act* of Alberta assumes that if a husband and wife die together, the husband died first.
 - It's an executor's duty to notify any beneficiaries named in the will.
 - A court-appointed administrator's decisions are governed by the *Intestate Succession Act*.
 - Aunts and uncles are lineal descendants.
 - If a male intestate leaves an estate worth \$30 000, his wife will inherit the entire estate.
 - The *Survivorship Act* give judges the power to decide if dependants have been adequately taken care of in a will.
 - A testator can will his or her share of a jointly owned property to a third party.



Compare your answers with those in the Appendix, Section 6: Extra Help.



Task Management



Communication



Technology



Do **one** or **more** of the following.

1. Imagine you're in a position to write up a will of your own. Now do **one** of the following.
 - a. Write a holograph will in which you distribute your estate in as clear and precise a manner as you possibly can.
 - b. From a library or bookstore get hold of a "How-to" publication on making legally binding solemn wills. This may consist of, or contain, pre-written forms with blanks to be filled in. Alternatively, locate a computer program for writing wills. Using the material you find, try to create what would be a legal, clear, unambiguous solemn will, properly signed and witnessed.

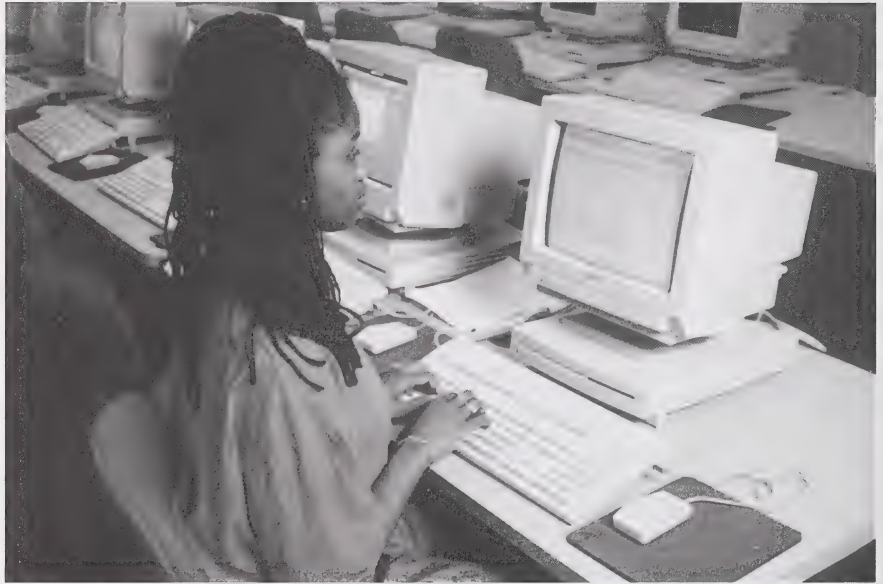


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Note: If you're old enough or otherwise in a position to write a legally binding will, be careful what you do with this activity; it's just possible that what you write might someday be construed as your genuine wishes for the distribution of your property. Don't just leave the finished product lying around and forgotten about.

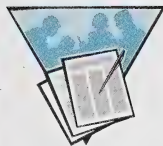


2. If you can get hold of a copy, watch the videotape *Wills*, part of the ACCESS series *You and the Law*. This video contains many practical tips on making a will, but doesn't contain too much real legal theory. Nevertheless, you might find it informative; and what it teaches you could certainly come in handy some day.

Teamwork

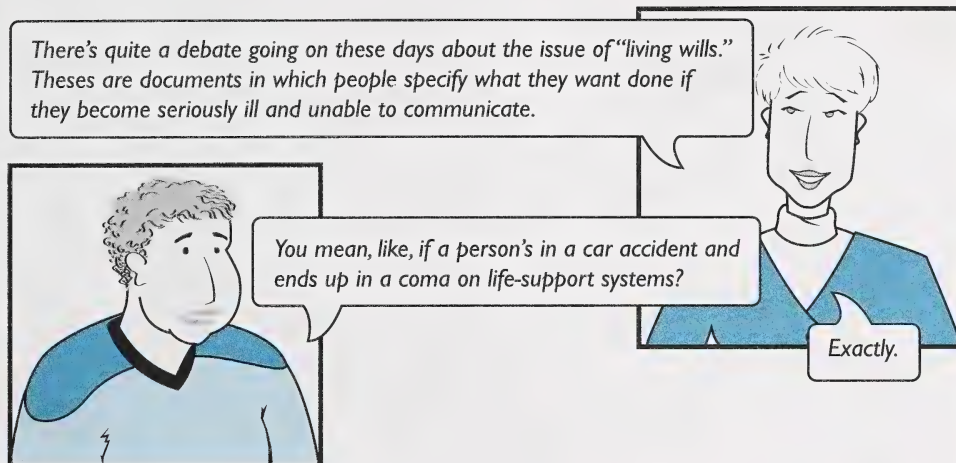


Communication



- Interview at least six or seven adults you know and ask them if they've prepared wills. If they haven't, ask them (politely, of course) why not. Ask, as well, if they're aware of the problems that can arise if they die intestate. If they aren't aware, explain a few problems to them.

If you're working with a study partner, compare your findings. Consider writing them up in a brief report.



Ethics

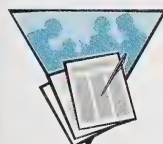


Some people think living wills should be considered legally binding documents. Others feel they're subject to abuses. Many people, for instance, might express in a living will a desire to be allowed to die rather than be kept alive artificially. This would put hospitals in a position where they were forced to end people's lives.

Teamwork



Communication



- Research the issue of living wills. Your librarian can help you, and you might try using the Internet. If you're working with a study partner, take sides and debate the issue. If you're working alone, write up your finding in a report, but make sure to explain what your position is on the issue.
- The October/November 1996 issue of the Alberta legal magazine *Law Now* contains several articles on wills and estates. If your library subscribes to this magazine, try to get hold of this issue and see what you can learn. In particular, read the article "The Will No One Wants—An Intestacy." The "will" of an intestate on page 10 is well worth reading.



CONCLUSION



In this section you've looked at the matter of wills and estates. You've seen how important it is to have a will, you've learned the legal requirements of a valid will in Alberta, and you've looked at some of the laws governing wills. You've also discovered what happens when a person dies without a will. Most people consider wills to be something for elderly people to be concerned with, but the fact is that as long as you're of legal age, you're never too young to write a will. An unpleasant fact of life is that death can strike at any time, and unless you really don't care what happens to your property when you die or what becomes of your loved ones, you should make writing—and frequently updating—your will a priority in your life.

ASSIGNMENT

Turn to your Assignment Booklet and do the assignment for Section 6.



M • O • D • U • L • E S • U • M • M • A • R • Y



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In this module you've had a broad overview of many of the laws governing your life as a consumer and as a family member. You should now have a pretty good idea of some of the basic legalities involved whenever you buy something, make a contract, rent accommodation, get married (or live with a partner), have a family, and so on.

The intention of this module has been to give you a general awareness of laws governing a wide spectrum of human activity, so you haven't had a great deal of detail in what you've been studying. If you find you'd like to dig deeper into legal issues, perhaps you should consider taking further Legal Studies modules. As you move out into the world, it's very important to know the legal implications of the things you do—and besides, learning about the law can be a fascinating experience in itself.

COURSE SURVEY FOR YOU AND THE LAW 1 (LGS 1010)

After you have completed the assignments in this module, please fill out this questionnaire and mail it to the address given on the last page. This module is designed in a new distance learning format, so we are interested in your responses. Your constructive comments will be greatly appreciated, as future course revisions can then incorporate any necessary improvements.

Name _____ Age ☐ under 19 ☐ 19 to 40 ☐ over 40
Address _____ File No. _____
_____ Date _____

Design

1. The Student Module Booklet contains a variety of self-assessed activities. Did you find it helpful to be able to check your work and have immediate feedback?

☐ Yes ☐ No If yes, explain.

2. Were the questions and directions easy to understand?

☐ Yes ☐ No If no, explain.

3. Each section contains Follow-up Activities. Which type of Follow-up Activity did you choose?

- ☐ mainly Extra Help
- ☐ mainly Enrichment
- ☐ a variety
- ☐ none

Did you find these activities beneficial?

- ☐ Yes ☐ No If no, explain.

4. Did you understand what was expected in the Assignment Booklet?

- ☐ Yes ☐ No If no, explain.

5. The course materials were designed to be completed by students working independently at a distance. Were you always aware of what you had to do?

- ☐ Yes ☐ No If no, provide details.

6. This distance learning course may include an assortment of drawings, photographs, and charts.

a. Did you find the visuals in this course helpful?

- ☐ Yes ☐ No Comment on the lines below.

b. Did you find the variety of visuals in this course motivating?

- ☐ Yes ☐ No Comment on the lines below.

7. Suggestions for audiocassette, videocassette, and computer activities may have been included in the course. Did you complete these media activities?

☐ Yes ☐ No Comment on the lines below.

Only students enrolled in a Junior High course need to complete the following question.

8. The Student Module Booklet may have directed you to work with your learning facilitator. How well did you work as a team?

Student's comments: _____

Learning facilitator's comments: _____

Course Content

1. Was enough detailed information provided to help you learn the expected skills and objectives?

☐ Yes ☐ No Comment on the lines below.

2. Did you find the work load reasonable?

☐ Yes ☐ No If no, explain.

3. Did you have any difficulty with the reading level?

☐ Yes ☐ No Please comment.

4. How would you assess your general reading level?

☐ poor reader ☐ average reader ☐ good reader

5. Was the material presented clearly and with sufficient depth?

☐ Yes ☐ No If no, explain.

General

1. What did you like least about the course?

2. What did you like most about the course?

Additional Comments

Only students enrolled with the Alberta Distance Learning Centre need to complete the remaining questions.

1. Did you contact the Alberta Distance Learning Centre for help or information while doing your course?

☐ Yes ☐ No If yes, approximately how many times? _____

Did you find the staff helpful?

☐ Yes ☐ No If no, explain.

2. Were you able to fax any of your assignment response pages?

☐ Yes ☐ No If yes, comment on the value of being able to do this.

3. If you mailed your assignment response pages, how long did it take for their return?

4. Was the feedback you received from your correspondence or distance learning teacher helpful?

☐ Yes ☐ No Please comment.

Thanks for taking the time to complete this questionnaire. Your feedback is important to us. Please return this questionnaire to the address on the right.

If you are enrolled at the Alberta Distance Learning Centre and will be mailing your Assignment Booklet to ADLC, you may return this questionnaire with the Assignment Booklet.

Instructional Design and Development
Learning Technologies Branch
Box 4000
Barrhead, Alberta
T7N 1P4



APPENDIX

Glossary
Suggested Answers



Glossary

abatement: a reduction in rent

acceptance: the assent to a definite offer

access: the right of a noncustodial parent to visit a child and inquire about important issues in his or her life

administrator: a male person appointed to administer an intestate estate

administratrix: a female person appointed to administer an intestate estate

adultery: voluntary sexual relations between a married person and someone other than that person's spouse

affinity: a relationship that is created by marriage

alimony: money a court orders one spouse to pay the other for support after separation

assault: the attempt of threat, by act or gesture, to apply force to another

assign a lease: turn a lease over to another person who will become the new tenant and pay rent to the landlord

bankruptcy: a legal situation in which a debtor turns most of his or her assets over to an official and is absolved from further proceedings against him or her

bequest: a gift made in a will to a beneficiary

beneficiary: a person named to receive a benefit; for example, a bequest under the terms of a will

breach of contract: failure to perform an obligation in a contract

capacity: the legal ability to enter into a valid contract

cohabitation: living together as husband and wife though not legally married

cohabitation agreement: a contract between two people living common law that lays out the rules of property ownership and the obligations each partner owes the other

collateral: assets used to secure a loan (If the loan isn't repaid, the lender keeps the assets.)

collateral relatives: relatives of a deceased other than lineal descendants

collusion: the agreement between a couple to deceive the court in a divorce hearing

common-law union: the relationship of a man and a woman who live together as husband and wife but who haven't gone through a legal marriage ceremony (sometimes called a *common-law marriage*)

condonation: the forgiving by one spouse of behaviour on the part of the other that would otherwise provide grounds for divorce

connivance: the permitting or encouraging of one spouse by the other to do something that would provide grounds for divorce

consanguinity: a blood relationship

consideration: something of value exchanged by the parties to a contract

contract: a legally binding agreement between two or more parties

corollary relief: secondary relief including child custody and access, child support, and spousal support

credit: money (or goods or services) advanced to another for repayment at a later time

credit bureau: a business that provides lenders with information about the credit history of prospective borrowers

credit rating: a personal financial profile detailing a person's history of taking out and repaying loans

custody: the care of a child, awarded by a court to a parent in a divorce

damages: money awarded to a plaintiff by a court to compensate for a wrong suffered

default: fail to carry out an obligation you've contracted to do

deposit: an amount of money given by a purchaser to a seller in return for which the seller agrees to hold an item for a stipulated time

desertion: the physical absence of one spouse with the intention not to return

divorce: the legal dissolution of a marriage

duress: the compelling of a person to do something against his or her will by means of force or the threat of force

estate: the entire collection of assets a person owns at death

executor: a male person appointed by a testator or testatrix to carry out the terms of his or her will

executrix: a female person appointed by a testator or testatrix to carry out the terms of his or her will

express contract: a contract in which the terms are specifically laid out

express warranty: an explicit, clearly stated warranty that's usually written down

family violence: any behaviour by one family member against another that may endanger the person's survival, security, or well-being

fixed-term tenancy: a rental agreement that begins and ends on specific dates

guarantee: another name for an express warranty

guardian: a person appointed to take over legal responsibility for a minor

holograph will: a will written entirely in the testator's own hand

implied contract: a contract that is suggested by the actions of the parties

implied warranty: a warranty that a seller may not actually make but which the laws says is part of the contract anyway

intestate: without a will at death; also a person who dies without a will

joint custody: a court order giving both parents legal responsibility for important decisions regarding their child

joint tenancy: a tenancy that includes more than one lessee

joint tenants: people who are together the legal owners of a property

judicial separation: a judgment that does not affect the legal status of a couple as married but acknowledges the deterioration of the union

landlord: a person who rents out a home to a tenant

lease: a contract between a landlord and tenant for the rental of a property

lessee: the tenant in a leasing arrangement

lessor: the landlord in a leasing arrangement

lineal descendants: the spouse, children, grandchildren, and so on of a deceased person

marriage: the legal union of a man and a woman to the exclusion of all others for life

matrimonial property: property owned in common by a married couple

maturity: the date at which a total amount borrowed is due

merchantable quality: suitable for sale

minor: a person under the age of majority—the age at which he or she can assume a legal obligation (in Alberta, eighteen)

necessaries: goods and services considered essential for a person's health and well-being

net value: the value of the assets minus any debts

non-necessaries: goods and services not considered essential for a person's health and well-being

offer: a proposal to enter into a contract

peace bond: a court order requiring an abusive spouse to keep the peace, demonstrate good behaviour, and obey other conditions decided on by the court

periodic tenancy: a rental agreement running on a week-to-week or month-to-month basis

plaintiff: the party bringing a legal action against another party in civil court

repudiate: reject or disclaim a contract

restraining order: a court order requiring an abusive spouse to stop molesting, annoying, or harassing the other spouse and/or the children

return: an arrangement whereby a seller accepts a purchased item back from the buyer in exchange for the purchase price, other merchandise, or a credit voucher

seal: a marking placed on a written contract to express serious intent

security deposit: an amount of money left by a tenant with a landlord at the beginning of a tenancy to cover any amounts owing when the tenancy ends (commonly called a *damage deposit*)

separation agreement: a contract made between separated spouses outlining such things as the division of property and mutual obligations

simple contract: any contract—implied, oral, or written—that is not under seal

sole custody: a court order giving only one parent legal responsibility for important decisions regarding his or her child

specialty contract: an agreement signed and under seal

statute: a law passed by a government

sublet: as a tenant, rent a property (or part of it) to a third party who will pay rent to you

tenant: a person who rents, rather than owns, the home in which he or she lives

testator: a male person who draws up his will

testatrix: a female person who draws up her will

trustee: a person appointed to hold part of an estate in trust until the beneficiary can take it over

visitation: the right of a parent who has not been awarded custody in a divorce to visit his or her child or children

ward: a person under the care of a protection agency

warranty: a promise by a manufacturer or retailer that goods being sold meet a certain standard

will: a legal document drawn up by a person and specifying how that person's property is to be distributed after death

Suggested Answers

Section I: Activity 1

1. The store has the right to keep Louis' deposit. As a good business practice, however, the store might be wise to return it; keeping a customer's good will is usually worth more in the long run than a bit of deposit money.
2. a. No. Mrs. Popowich had said she'd return shortly. She was the one who broke the agreement.
b. No; however, once again it would be a small price to pay to keep a customer happy.
3. a. Yes. The store should replace or repair the knife. The knife should do what it's supposed to.
b. No. Sherry hasn't followed the instructions printed clearly on the label.
c. No. Mr. Sousa used the blade for an inappropriate task; it's his fault the blade is ruined.
d. Yes. The store should exchange the shirt for a short-sleeved one. Merchandise should be similar to what is described on the package.

You'll be learning more about the issues raised in this Consumer Awareness Test later in the section.

4. Technically the store can refuse to allow Kim to exchange the gloves since the ten days are up in which returns are ordinarily allowed. However, if Kim explains that the gloves weren't opened until Christmas and tore on that very day, chances are she'd be allowed to exchange them. The best thing Kim could have done is to have explained that the gloves were to be a Christmas present when she bought them and asked for a written guarantee that she could bring them back within ten days of Christmas.
5. This sort of policy generates good will among customers and so increases the likelihood that they'll return to do more business at the stores.

Section I: Activity 2

1. Responses will vary. Here are a few possibilities you may have thought of:
 - buying food in a cafeteria or fast-food restaurant
 - using a bus or some other means of public transportation
 - buying a newspaper, magazine, or something else to read
 - getting a haircut
 - buying a pack of gum or a chocolate bar
 - going to the dentist
 - renting a video

Of course there are many many other examples you could use, but these should give you the idea.

2. Your chart should look like this one:

TYPES OF CONTRACTS		
Contract	Implied	Expressed
Getting a haircut	✓	
Buying a limited edition print		✓
Buying a used vehicle		✓
Buying a bag of chips	✓	
Renting two videos		✓

3. Answers will vary, but you probably discovered that most contracts we casually make on a daily basis are implied. All the examples listed for the suggested answer to question 1 are implied contracts.
4. Only the last contract is valid. You'll learn why shortly.
5. Your hand should look like this.



6. Your chart should look like this one:

Element	What It Is
Offer and Acceptance	<i>Mr. MacLeod's offer is to pay Janine to mow his lawn once a week for two months. Janine agrees to do this, thereby clearly accepting the clear offer.</i>
Consideration	The value that Mr. Macleod is getting is a nice-looking yard while Janine is receiving money.

Capacity	We aren't sure that Janine is past the age of majority. It's unlikely that either party is otherwise incompetent to form a contract.
Legal Purpose	The purpose of the contract is legal. No illegal act is being performed during performance of the contract.
Genuine Consent	As far as we know, Mr. Macleod isn't using force, intimidation, threats, or misrepresentation; nor is Janine.

7. a. There is no consideration being given to Andreas. He's simply promised something.
 - b. Being a minor, Jessica lacks the legal competence to make a contract.
 - c. This contract is for an illegal purpose.
 - d. Again there is no consideration being given Imelda's father for his promise.
 - e. This contract is the result of threats and intimidation; there's no real mutual agreement.
 - f. Marie is just spouting off in anger; she has no real intention of selling her computer for \$5. This means that there's no true, genuine offer here, so there can be no contract.
8. Contracts of this sort are normally complex deals often involving large sums of money. For this reason simple oral agreements are seldom adequate; there's too much chance of a misunderstanding, and the results of a misunderstanding in a deal of this sort can lead to grave consequences.

Historically, the requirement that certain sorts of agreements had to be written under seal goes back to the year 1677 when the Parliament of England passed the *Statute of Frauds*. This statute, which has since been adopted in Canada and many other countries, was passed essentially to clear up the confusion that existed in land ownership at the end of England's civil war.

Section 1: Activity 3

1. Yes, this is a valid contract because it's for shelter—something the courts recognize as a *necessary*.
2. No, the drum kit isn't a necessary. This means Bruno can repudiate the contract and he likely won't be forced to pay what he owes.
3. Answers will vary. The fact is that Heddi's lie doesn't change anything regarding her ability to repudiate her contract; the merchant dealt with her at his own risk. Heddi might, however face criminal charges for fraud.
4. a. Responses will vary. In actual fact, with some few exceptions parents aren't held liable by the courts for contracts made by their children unless they themselves have co-signed a written agreement.
- b. Answers will be personal. Were you able to present solid reasons in support of your viewpoint? This might be a good question for a debate or discussion with your class or study partner.
5. Answers will vary. It's always a good idea is to get the agreement in writing, though this won't make a great deal of difference in this sort of case. A better idea is to get a parent to co-sign the contract. Many merchants insist on cash sales when dealing with minors out of fear that their customers can later simply refuse to pay.

Section I:Activity 4

- Answers will vary. If you haven't been in this sort of situation, do you know of people who have?
- a. Your chart should look like this one:

REIKO'S GUARANTEE	
Time limit	The scissors are guaranteed for two years from the purchase date.
What is covered	The scissors are covered.
What Reiko must do	If the scissors are defective, Reiko must return them with his name and address to the distributor.
What will happen	The company will replace them at once free of charge.
What Reiko must not do	The scissors must not have been abused.

- Answers will vary. Two things you might have mentioned are that the guarantee doesn't define *abuse* and the guarantee doesn't explain precisely what isn't covered. Did you think of anything else?
- No, Shoel can't bring a claim. This situation is much like that in question 3.c. of Activity 1, where returns were being discussed. If, however, Shoel had told the salesperson at the store that he wanted a blade for fine cabinet making and the salesperson had recommended the wrong blade, then Shoel probably would have a case under the *Sale of Goods Act*.
 - Yes, Gina can refuse delivery under the *Sale of Goods Act* since the car doesn't live up to the description given Gina by the saleswomen.

Section I:Activity 5

- Compare your chart to the one that follows. You may have thought of other advantages or disadvantages.

USING CREDIT	
Advantages	Disadvantages
It's convenient.	Borrowing money costs money.
It's useful in financial emergencies.	It makes impulse buying easier.
It can force consumers into making payments rather than wasting money.	It can make people feel richer than they are.
It makes it possible to buy large items like homes and cars.	It can easily lead to heavy debt loads.

2. Lists will vary. Compare yours to this one:

- chartered banks
- trust companies
- large department stores
- Alberta Treasury Branches
- mortgage brokers
- credit unions
- finance companies and loan companies
- large businesses like gasoline retailers
- insurance companies
- pawnbrokers

Did you think of other sources? You may not be familiar with some—or even most—of the sources in the preceding list; the point is simply that people needing credit have a good many places available to them for finding it.

3. How you filled in the form will, of course, depend on your situation and on any information you made up. It's always important when filling out credit applications to be honest and to answer all the questions asked. It's also wise to be neat and precise.

Were there any questions on the form that surprised you? Why do you suppose a lending institution would want to know what your other financial obligations are?

4. Answers will vary. There's an oft-repeated joke to the effect that lending institutions will lend you money only if you can prove to them that you don't need it. Of course this is exaggerated, but it is true these institutions don't want to lend money to people they consider bad risks. Some institutions are more likely to lend money to risky clients than others, but they usually charge a higher rate of interest. For these reasons, if you're thinking of borrowing money, it's wise to get yourself into as favourable a financial situation beforehand as you can.
5. Note that the document says "...the following charges **may** be imposed." In other words, the credit manager has some discretion and room to manoeuvre depending on the clients' individual situations.
- Jeremiah has missed only one payment, and he has a very good reason. He also took the trouble to phone the lending institution to explain things. In this case the credit manager would probably allow Jeremiah to postpone his payment for the month, though he'd likely be held responsible for the interest on the payment that was missed.
 - Because of Sara's bad history of making payments, the credit manager would probably feel obliged to take legal action to collect what she owes, along with legal fees and other costs involved in collecting the debt.
6. First, you should contact the lender and explain your situation. Remember, it's in the lender's best interests that you go on paying the loan off; so he or she will likely be willing to arrange terms that will allow you to make payments—perhaps over a longer period of time. If that fails, there are other steps you can take; they're briefly explained in the rest of the activity.

7. a. Mike is in serious financial trouble and might consider bankruptcy. If he had a job, then a consumer proposal might be an alternative, but as it is, he's unemployed.
- b. Josée should consider selling the vehicle and buying one that will cost less per month in payments. A consumer proposal is also a definite possibility here.

Section 1: Follow-up Activities

Extra Help

1. a. iv h. vii
b. i i. xiii
c. iii j. xi
d. vi k. x
e. ix l. xii
f. ii m. v
g. viii

2. Answers will vary. Here are three shortcomings you might have mentioned:

- There is no time frame given.
- If parts and labour aren't included in the guarantee, what's left?
- The situations in which shipping and handling costs will be charged aren't spelled out.

Did you discover other defects?

3. Yes, an implied contract has been established by the behaviour of the parties. Your behaviour implies that you'll pay for the ride, and the driver's behaviour implies that he'll take you to the hospital.
4. All the elements except legal purpose seem to be missing. It's possible that Alana's brother is himself eighteen, but it's unlikely, so probably he lacks the legal capacity to make a contract. Also, since Alana is trying to force her brother into the deal, there's no genuine consent. As for offer and acceptance, it's probable that the offer was clear and genuine, but as far as we know there's been no acceptance.
5. Probably. The courts generally recognize education as a necessary, so Hans will likely be held to his contract.

Enrichment

There are no suggested answers for this activity; but if you did any or all of the questions, you should have learned a good deal while developing your skills in researching and interviewing.

Section 2: Activity 1

1. a. Eva would be best off entering into a periodic tenancy, probably on a week-to-week basis. That way she can leave as soon as she gets that job.
- b. No, the landlord can't legally do this; the security deposit can't be more than one month's rent.

2. Katie should insist on her rights and have the inspection report completed. It will protect her if the landlord should later try to charge her for damage that already existed before she moved in.
3. Lists will vary. Here are a few common areas of disputes:

- a landlord's refusal to return all or part of the security deposit
- a raise in the rent
- a sudden or unjustified eviction notice
- a landlord's intrusion into the tenant's privacy
- noisy tenants
- a tenant's abuse of the property
- a landlord's failure to maintain the property
- breaking of a lease

Did you think of any other areas?

4. a. Mr. Cardinal has several choices. Among them are these:
 - He can simply have the tenancy terminated.
 - He can see a lawyer and apply to the courts to order the landlord to live up to her agreement.
 - He can bring a legal action against the landlord for damages to compensate him for the wrong he has suffered.
- b. Because of his landlord's obligation to allow him "peaceful enjoyment" of his apartment, Gerald would probably be allowed to have a hookup if he took the matter to court.
5. a. On a week-to-week tenancy Mrs. Sandhu must give her tenants a week's notice. On a month-to-month tenancy she's required to give three months' notice.
- b. No, it's not legal. The landlord must pay Roberto the full deposit plus interest within ten days after he's moved out unless there's a legitimate reason for withholding all or part of it.
- c. No, he wasn't within his rights. Legally the Rentz family were still the tenants; and in fact, by letting himself in without permission or prior notice, the landlord was guilty of trespass. The Rentz family can insist on their rights to clean the property prior to the final inspection. Also, since a family of nine living in a house for three years can be expected to cause a certain amount of stress on the building, it's likely the courts would consider the worn carpets, dingy walls, and wobbly porch steps to be no more than normal wear and tear.
6. a. Since Sly has repeatedly failed to respect the rights of the other tenants, the landlord can evict him on a fourteen-day notice.
- b. Sly really has no rights as long as the landlord follows legal procedures. The notice must be in writing, set out the date of termination along with an explanation of the substantial breach, and be signed by the landlord. If Sly sincerely believes that he hasn't really been disturbing other tenants or the landlord, he should seek legal counsel.
7. Yes, the tenant's rights have been infringed upon. Mrs. Cardoza neither gave notice of her entry nor had a legitimate reason for entering. If the suspicion of alcohol consumption seems to be a major problem in Mrs. Cardoza's views, all she can do is discuss it with her tenant.
8. No. The landlord must give Ritchie at least three months' notice.

Section 2: Activity 2

1. a. The lessee is Doreen McGee.
- b. The lessor is Anwar Hussein.
- c. Charts will vary somewhat. Compare yours with the one that follows. Note that you may have included more details.

PRINCIPAL OBLIGATIONS	
Lessee	Lessor
<ul style="list-style-type: none"> • pay the rent in the amount and manner stipulated • pay water and light rates • refrain from assigning or subletting the premises without the lessor's permission (This will be explained later.) • allow the lessor entry at reasonable times to check on the repair • maintain the premises in good repair • allow the lessor to repossess the premises if any of these agreements are broken • pay the lessor a month's rent immediately and allow the lessor to terminate the lease if the lease be assigned to anyone else or seized by the lessee's creditors 	<ul style="list-style-type: none"> • lease the premises to the lessee • refrain from molesting the lessee in her enjoyment of the premises as long as she lives up to her obligations • pay all taxes assessed against the property

2. Ideas may vary somewhat. You'll be examining the principal advantages and disadvantages for a lessee shortly. Meanwhile, here's a basic list of ideas with which to compare your own:

	Advantages	Disadvantages
Lessee	<ul style="list-style-type: none"> • provides security • stabilizes the rent • works out details in the tenancy agreement • creates a framework for solving problems 	<ul style="list-style-type: none"> • locks tenant into the agreement even if he or she wants to move
Lessor	<ul style="list-style-type: none"> • guarantees a tenant for a period of time • works out details of the tenancy agreement • provides a framework for solving problems 	<ul style="list-style-type: none"> • locks the landlord into the agreement • locks the rent in even if the landlord wants to raise it

Did you think of other advantages or disadvantages?

3. An escalation clause allows the landlord to increase the rent in order to cover increased costs of maintaining the property. Fortunately, in Alberta this can happen only twice a year.
4. You should probably advise Nina to find an apartment where she can have a periodic tenancy. Locking herself into a lease in her situation wouldn't be very sensible.
5. If Germaine ups and leaves, she'll still be responsible for her rental payments. If her landlord is able to find another tenant, Germaine will likely still be responsible for any costs involved in this process. Probably the best advice you could give Germaine is to talk the situation over with her landlord right now. If the landlord is understanding, Germaine may be allowed to break her lease if she allows enough time to find a new tenant.

Another option for Germaine is to sublet her apartment or assign the lease to another person—as long as she gets her landlord's approval.

6. a. No. Jordan is responsible for paying rent to the lessor. The lessor and Yvette never entered into a rental agreement.
- b. After paying the landlord the amount owing, Jordan could begin a legal action against Yvette to recoup his losses. Probably his first step, however, would be to try to come to an arrangement with Yvette without going through legal channels.

Section 2: Activity 3

1. Answers will vary. Here are a few things you might have considered:

- Is the person financially responsible?
- Can you get along with the person?
- Does the person have the same expectations of the living arrangements as you do?
- Is the person's lifestyle compatible with yours?

Did you think of any other considerations?

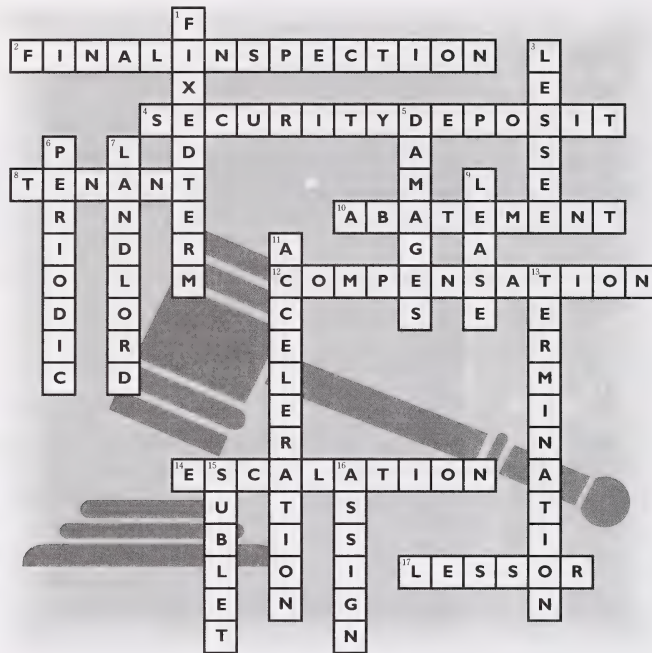
2. One idea is to draw up a written agreement amongst your friends in which you work out responsibilities. Each of you could sign the agreement.

Did you come up with other ideas?

3. Gerry will be responsible for the entire month's rent since he's liable for the whole amount if his friend defaults.
4. a. Laura, being the only official tenant, has sole responsibility for paying the rent. Signe has no responsibility to the landlord. She may, though, have a responsibility to Laura depending on how they've arranged things between themselves.
- b. Probably the best advice would be to talk things over. Signe may be willing to stay and pay rent long enough for Laura to find another roommate or to arrange with the landlord for the lease to be terminated.

Section 2: Follow-up Activities

Extra Help



Enrichment

There are no suggested answers for this activity; however, if you did some or all of these questions, you should have gained a good deal of useful information about current landlord/tenant law in Alberta while developing your research skills.

Section 3: Activity 1

1. The two types of people are clergymen (ministers, priests) and marriage commissioners.
2.
 - a. This is prohibited.
 - b. This is allowed.
 - c. This is prohibited.
 - d. This is prohibited.
 - e. This is prohibited.
 - f. This is allowed.
 - g. This is prohibited.

How did you do? If you had trouble, take a look at the affinity/consanguinity chart that follows. Do you feel that all the marriages it prohibits are justified?

A man may not marry his	A woman may not marry her
grandmother grandfather's wife wife's grandmother aunt wife's aunt mother stepmother wife's mother daughter wife's daughter son's wife sister granddaughter grandson's wife wife's granddaughter niece nephew's wife	grandfather grandmother's husband husband's grandfather uncle husband's uncle father stepfather husband's father son husband's son daughter's husband brother grandson granddaughter's husband husband's grandson nephew niece's husband

3. Compare your chart to this one.

Client's Question	Yes	No	Explanation
My sixteen-year-old son wants to get married. Can I stop him?	✓		Persons under the age of 18 must have parental consent.
Friends of mine are first cousins. They're interested in getting married. Is this legal?	✓		Relations by consanguinity do not restrict marriage of cousins.
I just discovered that my husband's divorce from his first wife was never made final by the court. Are we legally married?		✓	No. Until his divorce is final, your husband remains married to his first wife.
My friend got drunk and married her boyfriend in Las Vegas. Is this a legal marriage?		✓	No. Your friend lacked the capacity to understand the ceremony and rights/responsibilities that come with marriage.
My brother got his girlfriend pregnant. The parents are threatening to harm him if he doesn't marry her. Is this legal?	✓		If there is genuine fear of physical harm here, your brother is being put under duress to marry. Therefore there is a lack of consent.

Section 3: Activity 2

1. Charts will, of course, vary considerably. Some people will list purely practical reasons for and against common-law relationships, while others will point out more intangible aspects such as commitment and trust. Still others, with strong religious beliefs, will bring in arguments based on the teachings of their churches.

Here's one student's chart you can compare with your own:

MARRIAGE OR COMMON LAW	
In Support of Marriage	In Support of Common Law
<ul style="list-style-type: none">• Married partners commit themselves, so they can stop worrying about other relationships, etc.• It provides a more stable home for any kids they have.• The law sees to it each partner owes the other support and that they share their wealth.• Being married helps people develop a sense of responsibility for people other than themselves.• Many people consider sexual relations outside of marriage immoral.• Getting married keeps the parents happy!	<ul style="list-style-type: none">• Partners can discover just how compatible they really are before committing to a marriage.• If the relationship goes sour, it's easy to split up.• Partners retain freedom and independence.• The fact is that people do change over time, so they shouldn't get locked into a situation it's hard to get out of.• People can make mistakes, and it's not fair to lock them into a bad decision—one they may have made when young and inexperienced.

Did you think of other reasons? Were you able to express your own opinion for or against clearly and logically? Can you produce counter arguments to rebut arguments from the other side?

2. No, she should insist that Ed make out a proper will. All Ed's money will likely go to his nearest living relative, not to his common-law partner.
3. The courts will likely agree with Dmitri. When a common-law relationship ends, spouses can take their own belongings; and since Dmitri owned the appliances originally and never gave them to Liz, they're still his.
4. Andrea's partner is right. Unless he cosigned for the loan, he's not liable for it.
5. Answers will vary. Compare yours to the one that follows.
 - Two legal advantages of cohabiting are as follows:
 - Partners retain keep ownership of their own belongings and can take them with them if the relationship breaks down.

– Because neither partner is financially responsible for the other, there's less danger of being taken advantage of by a "freeloader."

• Two legal disadvantages of cohabiting are as follows:

– Neither partner is guaranteed support by the other; so if a couple breaks up, the chief breadwinner can leave his or her partner living in poverty.

– If one partner dies without a will, the other partner can make no claims to inherit from his or her estate.

Did you think of other points? Of course everything listed above can be considered an advantage or disadvantage, depending on your viewpoint. The chief thing is that common-law relationships allow for more freedom and fewer legal commitments. This can often benefit one partner at the expense of the other.

6. a. A cohabitation agreement guarantees property ownership and obligations on the part of the partners in a common-law relationship. This sort of agreement can allow couples to solve problems in advance; for instance, it can be agreed that if the relationship fails, all the couple's wealth will be evenly distributed between them or that if one partner dies, the other will inherit from his or her estate.

b. Answers will vary, but the most likely reasons are that

- couples don't understand the legal issues involved in cohabiting nor do they know about cohabitation agreements

- couples who believe they're in love can't foresee the unpleasant situations that can eventually develop in a cohabitation situation

- often couples simply can't be bothered to work out an agreement

- since couples who live common law are usually people who value their freedom, they aren't likely to sign agreements that would restrict it

Did you think of other reasons?

c. Did you find this an interesting experience? Were you surprised at how many issues you thought of? This sort of exercise works best, of course, when two people are involved; it's often hard for one individual to foresee all the situations that can arise. And, of course, anyone who's ever actually lived common law will have a much better idea of what a cohabitation agreement should contain.

Section 3: Follow-up Activities

Extra Help

1. a. Unfortunately Marcia won't receive any immediate compensation (however, she can petition the court and try to receive some). On the other hand, the children may be compensated if it's proven that they are, in fact, David's. The child from the earlier relationship won't be compensated.

b. Had the couple been married, a formal process to end the marriage would take place and a decision made as to how the necessities in life would be provided for all three children. In addition, Marcia would probably receive support of some sort, depending on the circumstances.

2. a. True
- b. False (Sterility isn't grounds for an invalid marriage since the partners can still engage in sexual relations. A sterile partner is simply unable to have children.)
- c. False (If at the time of the marriage both parties were mentally capable of understanding the ceremony along with the rights and responsibilities they were assuming, the marriage is legal.)
- d. False (In a common-law relationship debts and credits are the responsibility of each partner unless they've entered into a contractual agreement with each other.)
- e. True
- f. False (Females under sixteen can also marry, with parental consent, if they already have a child.)
- g. True
- h. True
- i. True
- j. False (If one member of a common-law relationship dies without a will, his or her nearest relative will inherit, not the partner.)

Enrichment

There are no suggested answers for this activity; but if you did any or all of the questions, you should have developed your research skills yet further while acquiring more understanding of family law.

Section 4: Activity I

1. a. the *Child Welfare Act*
b. the *Dower Act* and/or the *Matrimonial Property Act*
c. the *Domestic Relations Act*
d. the *Family Relief Act*
e. the *Child Welfare Act*
2. Translations will, of course, vary; the important thing is that you understand what the clause means. Compare your translations with the ones that follow.
- a. **Translation:** The temporary order may require one person to make payments of money at intervals to another. The court can decide on the amounts.
- Statute:** the *Domestic Relations Act*
- b. **Translation:** No married person can dispose of the family home by selling it, willing it, and so on to a third party without the written consent of his or her spouse.
- Statute:** the *Dower Act*
- c. **Translation:** No one is allowed either to issue a marriage licence to, or carry out a marriage ceremony for, anyone under the age of sixteen. The exception is for girls who are certified by a doctor to either be pregnant or to have a living child.

Statute: the *Marriage Act*

- d. **Translation:** If a person dies and his or her will doesn't provide adequately for any dependants, a judge is allowed to change the will so that these dependants are properly cared for.

Statute: the *Family Relief Act*

- e. **Translation:** If a child welfare worker, police officer, or anyone authorized in writing under this act has good reason for thinking a child is neglected by his or her family, that person is allowed to take the child into custody right away, without going through the formalities of getting a warrant.

Statute: the *Child Welfare Act*

- f. **Translation:** The court is allowed to divide between a married couple the property they owned both individually and as a couple.

Statute: the *Matrimonial Property Act*

Section 4: Activity 2

1.
 - a. False: The impact of the behaviour on the other person is the key factor. Any behaviour that produces fear or pain, or is used to control another person, is considered violent.
 - b. False: One incident is all that's needed to set up the dynamic of fear and permanently change the relationship and the victim.
 - c. True: It's chilling to read law books and religious literature that counsel men to beat, maim, bully, and terrify their wives, as if they would their property.
 - d. True: Most people who use violence have seen or experienced violent acts in their childhood homes, either between their parents or between parents and children.
 - e. False: There are no clear descriptive profiles of females who are abused by men. They come from all backgrounds with a wide variety of personalities and skills.
 - f. False: Only one person is responsible for the use of violence. The abuser is always totally and solely responsible for his or her actions. If the abused spouse has been guilty of reprehensible behaviour, these are ways of dealing with the situation that don't involve violence.
 - g. False: The cycle of violence follows three distinct phases. First, tension mounts; second, violence erupts; and third, the abuser shows some remorse (the honeymoon phase).
 - h. True. In any family or any relationship disagreements and conflict are inevitable; violence is not.
2.
 - a. economic abuse
 - b. neglect
 - c. physical abuse
 - d. emotional or psychological abuse
3.
 - a. According to the article, poverty, alcohol and substance abuse, and weak parenting skills resulting from a poor upbringing are the causes of child abuse and neglect.
 - b. The Court of Appeal overturned the conviction because the judge determined that the couple hadn't had a fair trial. The trial judge, it was felt, had made errors in summing up the evidence to the jury.
 - c. The reason was that it was suspected that the child had been physically injured by his guardians.
 - d. Summaries will, of course, vary, but the main thrust of the article seems to be that serious changes are needed in Alberta's child welfare system (rather than more bureaucratic tinkering with the rules) if it's to work properly to protect children like Jason Carpenter. The article stresses the need for reinvestment in social and prevention programs.

Section 4: Activity 3

1. Answers will vary. Compare your list to the following. You may have thought of others.

- Children are easier to push around than adults and they have little ability to complain.
- Children can be paid lower wages and they eat less.
- Poor parents are often willing to sell children into servitude.
- Children have smaller hands, which are better for fine work (such as knotting oriental rugs).

2. Answers will vary. Using moderate physical force (such as spanking) has long been accepted as a normal means of disciplining children, and many people firmly believe that the old adage “Spare the rod and spoil the child” is tried-and-true parenting advice. On the other hand, it can be argued that allowing parents to beat small, helpless children is a barbaric relic of our past. At one time it was acceptable for husbands to beat their wives, yet this practice now shocks most people. Isn’t it even worse, it can be asked, to allow adults to beat children, who are far more helpless to resist than wives?

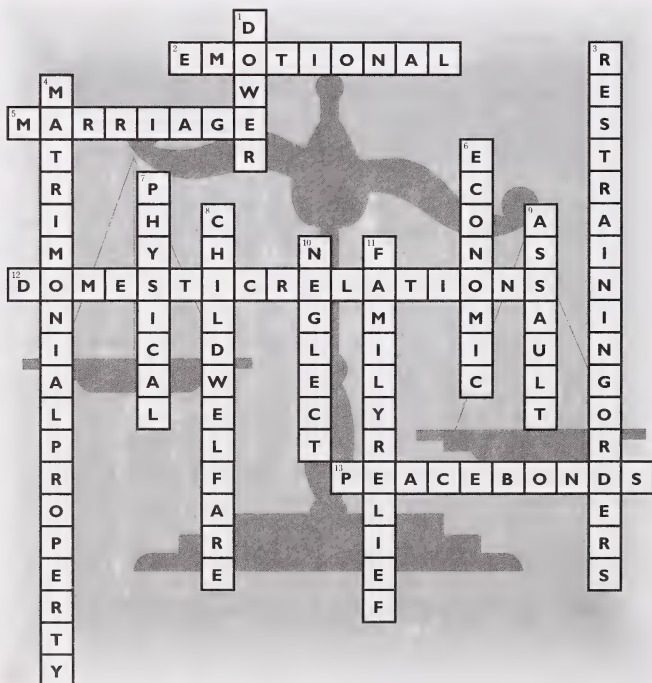
Ultimately the argument boils down to a question of rights (both parents’ and children’s) and the power of the government to interfere in family matters. It’s a very delicate topic, and one you’re bound to hear a good deal more about in years to come.

3. a. Answers will vary. Judges generally assume that it’s in the best interests of children to do all that can be done to save their lives in such situations.
- b. Answers will vary. It’s a complex issue involving children’s rights, parents’ rights, and the rights of the government to overrule parents’ decisions. It pits individual religious values against society’s belief in the sanctity of life. In other words, it’s a very difficult issue to resolve.

Section 4: Follow-up Activities

Extra Help

1.



2. Compare your chart to the one that follows.

Question	Your Advice	Legislation Used
Is it true that parents can lose custody of their children if they're too poor to support them?	Yes. Parents must provide the necessities in life for their children.	<i>Child Welfare Act</i>
Elsbeth called the police and reported that she'd been sexually assaulted by her husband, Bill. When the police arrived, Bill just laughed and claimed he was only exercising his "rights as a husband." Can the police arrest Bill?	Yes. Bill can be charged with sexual assault if he forced his wife to have sex with him.	<i>Criminal Code of Canada – Sexual Assault</i>
I'm planning on leaving my abusive wife. Do I have any rights to claim the property I own?	Yes. Spouses are given rights in respect of the homestead and property	<i>Dower Act and Matrimonial Property Act</i>

You may have had problems knowing the precise answers to some of these questions, but you should have been able to make a leap of logic from what you do know to come up with likely answers.

Enrichment

1. Interestingly, shortly after this article appeared in the newspaper, the Alberta government moved to amend the *Child Welfare Act* so that child prostitution will be considered sexual abuse. This change will allow child welfare workers to more easily apprehend child prostitutes for their own protection.
- 2.–4. There are no suggested answers for questions 2 to 4, but once again by doing questions of this sort you're developing your research skills along with your awareness of legal studies issues.

Section 5: Activity 1

1. B
2. C
3. D
4. A

Section 5: Activity 2

1. Advice will vary. Since the breakup of a marriage is a very serious matter, the best advice might be that the couple should try to work things out in such a way as to save the marriage if at all possible. If this proves to be impossible, the next step would likely be to try to get the couple to negotiate a separation agreement. If Mr. Diduch proves unwilling to do this, his wife could apply to the courts for a judicial separation since her husband has committed adultery. The final option would be for Mrs. Diduch to make immediate application for divorce, though this isn't something to be decided upon in the heat of a moment.

Note that the *Divorce Act* requires lawyers to tell their clients about the availability of mediation services for divorcing couples. Divorce mediators help couples work things out amicably and in a way that costs far less than a legal battle in the courts would.

2. Again the advice students give will vary. Some people in the position of this couple might be tempted to lie to the court, claiming, perhaps, that one of the partners has committed adultery. An unscrupulous lawyer might agree to a scheme such as this; but as you'll see shortly, if the courts discover the lie, they won't allow the divorce. Besides, lying in court is a serious offence.

There's an ethical dimension to this too, of course: is it morally right to lie, even in a situation like this where both partners want the same thing? Most people would say no.

The best advice would likely be that the couple should separate for a year with no intention of reuniting. At that time, they could file for divorce on legal grounds. This has the added advantage that it will give the couple time to think things over.

3. Compare your chart to the one that follows. You may have had to guess a bit at the second question. The fact is that the couple in this case are sharing a building, but they aren't living as husband and wife. They're not living together any more than two people in different apartments in one building are living together.

Client's Question:	Yes	No	Explanation
Do we have to go to court to get a legal separation?		✓	Not if your spouse agrees to the separation.
My husband and I separated six months ago, but for economic reasons he's living in the basement suite downstairs. Are we still legally separated?	✓		If you lived separately and apart during that period of time, then you're legally separated.
If I don't want a divorce, can I stop it even if the marriage has technically broken down?		✓	A judge will grant a divorce if your spouse can prove marriage breakdown.
Marge and I have lived together for twenty years. Do I have to divorce Marge before I can marry Wanda?		✓	A divorce is not required since they're not legally married.
I know of at least one instance when my husband was unfaithful. Is this grounds enough for a divorce?	✓		Adultery is grounds for marriage breakdown and divorce.
My husband has been working in the oil fields in Saudi Arabia for two years. I want a divorce on the grounds that we've been living apart.		✓	While this couple has been living apart, there's been no obvious intention not to reunite.

4. a. The bar to divorce is condonation.

b. Answers will vary. The argument in favour of condonation is clearly that Mrs. Chin moved back in with her husband knowing about his behaviour. The argument against condonation is that it was necessity that drove her back and that the two didn't simply resume living as before.

Was Mr. Chin restored to his wife as a spouse in her eyes? It's a tricky question, isn't it? You can see how simple legal issues can become problematic very quickly.

5. This is a question that's very difficult to resolve. Ethical, religious, and financial dimensions come into play. Some people maintain that it should be as easy to get a divorce as to get married—that adults shouldn't be locked into decisions they made years ago when they were younger and less experienced. Besides, people change; shouldn't they be allowed to get on with their lives instead of remaining locked into older, destructive patterns?

On the other hand, some people point out that as divorce laws ease up people tend to end their marriages at the first sign of trouble rather than working at their problems in a responsible fashion. And, especially where children are involved, a sudden decision to divorce can create a great deal of suffering.

While this module was being written, proposals were being made to require couples contemplating divorce to go through several weeks of counselling in an attempt to make sure divorce is the only way to salvage their lives. What do you think of this idea?

Section 5: Activity 3

1. It's almost certain that the courts would honour the contract the couple made and award the cottage to Mrs. Milligan. It's not the business of the courts to undo a contract made by adults with full legal capacity simply because over time one party did better by it than the other. However, the court would look at other factors in the Milligans' situation and perhaps equal things out while dividing up their remaining assets if their situation seemed to demand it.

2. a. Because the courts look at contributions of all sorts made to the household, they'd consider Mrs. Kabaroff's homemaking contributions as well as her husband's financial ones in distributing the couple's property.

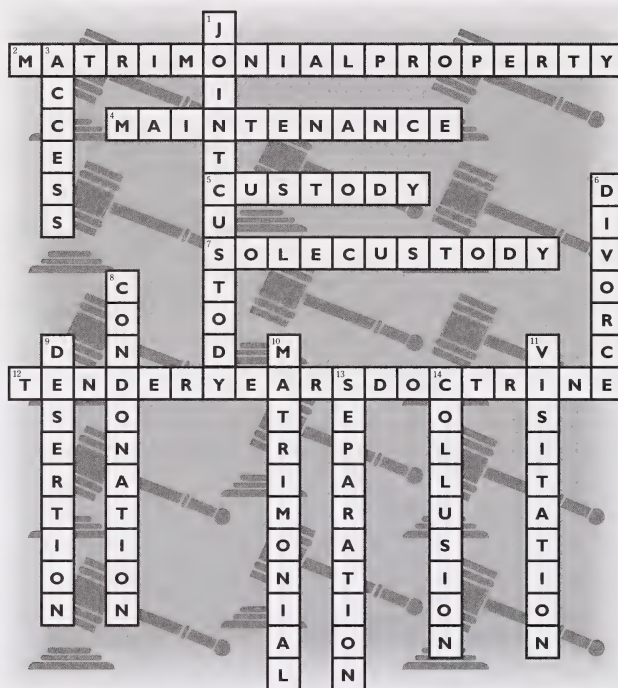
b. Answers will vary, though today few people would argue with this principle. Not long ago, however, things were different, and Mrs. Kabaroff would likely have received far fewer of the family assets than she would today.

3. a. and b. Answers will, of course, vary. The important thing is to be able to defend your ideas. Were you able to do this? A good test is to debate issues like these with other students and see how well you do.

4. Prior to this program, people trying to enforce maintenance payments had to go through the courts. Hiring a lawyer and commencing a legal action are very expensive, and usually it's the very people who can least afford it who need to have maintenance payments enforced. For this reason, the Maintenance Enforcement Program is a great help to many people who would simply have not been able to contemplate undertaking a court battle.

Section 5: Follow-up Activities

Extra Help



Enrichment

1. a. The legal issue is whether an affair carried out by way of e-mail messages ("on-line adultery") can constitute legal grounds for divorce.
- b. Answers will vary. Technically no adultery has occurred. Might the husband base his case on the grounds that what his wife has done constitutes mental cruelty?
- 2.-7. There are no suggested answers for these questions. Once again, however, if you tried one or more of them you should have significantly increased your knowledge and skills in the area of legal studies.

Section 6: Activity I

1. Answers will vary. Compare your ideas with these:
 - People tend to believe they'll always have a lot of time before they'll have to worry about wills.
 - No one likes to think about the reality of his or her own death. Making wills forces people to confront their own mortality.
 - Some superstitious people feel that to draw up a will is to invite death.

- Many people think that everything will automatically go to their spouses when they die so wills are unnecessary.

Did you think of other reasons?

2. Answers will vary. Here are a few ideas with which you can compare your own:

- If a person dies without a will, very often his or her estate is frozen until the courts sort things out, which can take years and a great deal of money. Meanwhile the person's dependants have nothing.
- If two parents die together and have no wills, their children can end up in the hands of people the parents would never want raising them.
- Having a will reduces all the expenses involved in settling an estate, leaving more money for the legitimate heirs.
- Having a will can help prevent arguments among family and friends.

Did you think of other reasons?

3. The numbers should be as follows:

- a. 4 b. 2 c. 5 d. 3 e. 1

4. The estate would break down as follows:

- Mrs. Kinderchuk would inherit \$50 000 (the initial \$40 000 plus a third of what remained).
- Lorraine, Jasmine, and Marcel would each get \$6667 (one third each of the remaining \$20 000).

Section 6: Activity 2

1. Answers will vary. One reason is that a holograph will allows people suddenly confronted with imminent death to quickly and legally express their final wishes. In 1948 a Saskatchewan man trapped under a tractor was able before he died to scratch his will into the machine's fender and sign his name. This was recognized as a legal holograph will.

Another possible reason is that holograph wills allow poorer people with simple estates to create valid wills without resorting to expensive lawyers.

Were you able to think of other reasons?

2. This will won't stand up in courts. Since it's not entirely in the testator's handwriting, it can't be considered a holograph will; however, since it was signed without witnesses, it isn't a proper formal will either.
3. Answers will vary, but most people would likely have pointed out that the dangerous situations these people may find themselves in as part of their duties make it important for them to be able to write wills (and to do it quickly and with few formalities.)
4. The courts don't want to assist in this sort of bribery and the attempt on the part of people to control the lives of others after they themselves are deceased.
5. Answers will vary. Remember that often beneficiaries aren't really in a position where they can easily refuse the money. Imagine, for instance, a relative who has been dependent on the deceased and who has counted on inheriting money for survival. Can this person casually decide to forego an inheritance he or she was counting on because of a condition in the will?

6. The problem is, of course, that both parents may die together. In these days of regular travel by car and plane, the likelihood of this happening is probably greater than ever.
7.
 - The problem with Mr. Wiemer's will is that it fails to meet the legal requirements of either type of legal will. It's not all in his handwriting, so it's not a holograph will; and it wasn't properly signed and witnessed, so it can't be considered a formal will.
 - Mrs. da Gama's problem is that she put a condition on her son's inheritance that the courts won't enforce.
 - There are three problems with the Thompson scenario. First, Mr. Thompson's father isn't of sound mind. Second, Mr. Thompson forced him to sign the will, presumably against his will. Third, the will isn't properly signed and witnessed, nor is it in the father's handwriting, so it isn't either of the two types of will recognized as valid in Alberta.
 - The problem with this situation is that the law prohibits people named as beneficiaries in wills to act as witnesses.
8.
 - A: declaration of who is making the will
 - B: cancellation of previous wills
 - C: appointment of executor
 - D: appointment of guardian for the children
 - E: bequests
 - F: signature and witnesses

Note that in this will the testator's wife is appointed to be both guardian and trustee for the children. A guardian is responsible for the children's upbringing—like a parent—while the trustee looks after money coming to the children until they're old enough to do this themselves. Guardians and trustees needn't be the same people.

Section 6: Activity 3

1. Answers will vary, but the facts are these. Alberta's *Family Relief Act* allows a judge to decide if dependants have been adequately provided for in a will. Since Mr. Vandenberg is a spouse and financially dependent, chances are a judge would decide that he should partake in his wife's estate.
2.
 - a. Answers will vary. Sometimes a testator will have made a generous gift to a dependant before his or her death. In this case a court may decide that a dependant can be legitimately excluded from inheriting.
 - b. The best thing a testator should do in this case is make clear mention of the gift in his or her will so that the courts can be aware of it.
3. Under the provisions of the *Dower Act*, Mr. Schreiber has a "life estate in the homestead" and cannot be forced to move.
4.
 - a. According to the *Dower Act*, Mr. Peitersma's wife can continue living in the home until she dies, but according to the law on joint tenancy, the whole property automatically goes to Mr. Peitersma's brother when Mr. Peitersma dies.
 - b. Answers will vary. In reality, Section 25 of the *Dower Act* says that in a case like this, Mr. Peitersma's wife has no dower rights in the residence. In other words, the property will now belong to Mr. Peitersma's brother, and he can evict his brother's widow if he so chooses.

Would you decide things differently if you had the power?

5. a. If Mr. Lindstrom dies first, his entire estate goes to his wife. Then, when Mrs. Lindstrom dies, it will all go to her son. Their daughter will inherit nothing.
b. If Mrs. Lindstrom dies first, her son will inherit her estate. Later, when Mr. Lindstrom dies, his estate will go to their daughter.
6. Since Mr. Lindstrom is the older spouse, the *Survivorship Act* assumes that he was the first to die. That means that Mrs. Lindstrom would inherit his entire estate, which would immediately pass to her son upon her own death. If the Lindstroms had been smart, they'd have put a clause into their wills to deal with this situation to ensure that each child would inherit something.

Section 6: Follow-up Activities

Extra Help

1. The courts will likely recognize the will as valid. It is set up as a correct solemn will, and, if Kareem follows the instructions in the books he's obtained, it should be legally binding. Solemn (formal) wills are usually, but not always, drawn up by lawyers.
2. Mrs. Melnychuk's children will split the estate between them—each child receiving \$20 000.
3. a. false (The provisions take effect when the testator dies.)
b. false
c. false
d. false
e. true
f. false
g. false
h. true
i. false (It assumes that the older spouse died first.)
j. true
k. true (An administrator is appointed only when a person dies intestate.)
l. false
m. true
n. false (The *Family Relief Act* does this.)
o. false

Enrichment

There are no suggested answers for this activity; however, if you did one or more of the exercises in it, you likely learned a good deal. The issue of living wills (question 4), is especially topical these days. It's a great question for a classroom debate or discussion or for a report. Related to this issue is the question of organ-donor cards.



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